

EXHIBIT 67

In The Matter Of:
Circuit City Stores, Inc., et al v.
Sony Electronics, Inc.

Brandi Fose
June 25, 2014

Halasz Reporting

Original File fose.txt

Min-U-Script®

1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFFS:

4 Andrew Caine, Esq.
5 Robert Feinstein, Esq.
6 PACHULSKI STANG ZIEHL & JONES, LLP
7 1011 Santa Monica Boulevard, 13th Floor
8 Los Angeles, California 90067-4003

9
10 ON BEHALF OF THE DEFENDANTS:

11 Andrew W. Goldwater, Esq.
12 FRIEDMAN KAPLAN SEILER & ADELMAN, LLP
13 7 Times Square
14 New York, New York 10036-6516

15 Peter J. Barrett, Esq.
16 KUTAK ROCK, LLP
17 Bank of America Center
18 1111 East Main Street, Suite 800
19 Richmond, Virginia 23219-3500

20 Lloyd B. Sarakin, Esq.
21 HENDERSON CAVERLY PUM CHARNEY, LLP
22 12750 High Bluff Drive, Suite 300
23 San Diego, CA 92130
24
25

I N D E X

Fose	Page
Examination by Mr. Goldwater	4-112

E X H I B I T S

Fose Deposition Sony Exhibit No.	Page
1 Notice of Deposition	19
2 Exhibit B, Pages 1-76	19
3 Sony AP Data CCLT01273 - CCLT02159	28
4 Plaintiff's Responses to Defendant's First Set of Interrogatories to Plaintiff	48
5 Chargeback 97769, CCLT030119-030136	59
6 Advertising Billing Memorandum, SEL00000006	97
7 Chargeback documents 92982	99
8 Billback Dec \$572,740, SEL00000851-852	108

1 BRANDI FOSE

2 was sworn and deposed as follows:

3 EXAMINATION

4 BY MR. GOLDWATER:

5 Q Good morning, Ms. Fose. I introduced myself
6 before, I'll do it again. I'm Andrew Goldwater. I'm a
7 lawyer for Sony Electronics. Where do you work?

8 A With the Circuit City Trust.

9 Q And do you have a position or a title with
10 the Trust?

11 A I do. It's accounts receivables and IT
12 manager.

13 Q What responsibilities do you have with
14 accounts receivables?

15 A Basically, the collection of the receivables,
16 but obviously, that entails supporting any adversary
17 proceedings, working with the attorneys, any
18 reconciliation between Circuit City and the vendors.

19 Q And what are your responsibilities in the IT
20 area?

21 A Basically, I oversee all the systems we have
22 in place, including, you know, desktops, servers, that
23 kind of thing, just to make sure that all the
24 applications that we use continue to be up and running
25 and are maintained and working efficiently.

1 Q Do you report to anyone?

2 A Yes. I report to Katie Bradshaw. She's the
3 senior trust manager, and we all ultimately report to
4 Al Siegel, the trustee.

5 Q Do you report to Ms. Bradshaw as both for
6 your accounts receivable responsibly and your IT
7 responsibilities?

8 A Yes. She -- everyone at the Trust reports to
9 her.

10 Q And I take it this is a full time job you
11 have?

12 A Yes.

13 Q When did you start to work for the Trust?

14 A As soon as Circuit City became a trust, so
15 November of 2010.

16 Q And where did you work before you worked for
17 the Trust?

18 A I worked of Circuit City.

19 Q What position or title did you have at
20 Circuit City immediately before you started working for
21 the Trust?

22 A That's a good question. I'm not -- we
23 weren't really retitled at that point, because we kind
24 of were all shuffled into different roles, but prior to
25 that, I was the inventory accounting manager, and then

1 I took over the receivables responsibilities in January
2 of 2009.

3 Q What was your responsibility in the inventory
4 accounting position?

5 A I oversaw the accounting for all merchandise
6 inventory. So basically, the appropriate accounting,
7 all the inventory transactions that happened throughout
8 the company, as well as physical inventory.

9 Q What were the AR responsibilities that you
10 assumed in about January of 2009?

11 A The AR responsibilities that I assumed
12 related to vendor funding.

13 Q When you say vendor funding, can you tell me
14 more what you mean by that?

15 A Sure. A lot of our vendors, Sony for one,
16 obviously, offered certain programs to Circuit City
17 that we ultimately would charge the vendor back for,
18 whether it would be for advertising or sales-based
19 promotions, rebates, et cetera. There were many
20 different types of programs, but basically, we call
21 that vendor funding. Within Circuit City, there were a
22 lot of different acronyms and names that may have been
23 thrown around to describe that department, but
24 ultimately, that's what we were in charge of collecting
25 and accounting for.

1 Q Were there other people in the vendor funding
2 position or that had the vendor funding
3 responsibilities at the same time you did?

4 A That had the same responsibilities that I did
5 or that worked within that area?

6 Q Good point. Were there other people who
7 worked in the same area?

8 A Yes. There was an entire department of
9 people, but in January, right about the 16th, when we
10 announced liquidation, a lot of folks were let go. So
11 I don't remember the exact numbers of who was there
12 before or after that, to be honest. But yes, there
13 were several people that had that responsibility.

14 Q Can you tell me, as best you can remember,
15 who those people were?

16 A Every single person?

17 Q How many people are we talking about?

18 A Maybe 20.

19 Q Was there a person in charge of the vendor
20 funding area?

21 A Well, in January, I was.

22 Q I'm sorry, immediately before you.

23 A Carole Elliott.

24 Q E-l-l-i-o-t?

25 A T, two T's, and Carole was with an "E" on the

1 end.

2 Q E-l-l-i-o-t-t-e?

3 A No, Carole has an "E" on the end.

4 Q Oh, I'm sorry, Carole.

5 A That's okay.

6 Q Do you know where Carole is these days?

7 A Yes.

8 Q Where is she?

9 A She works for Owens and Minor.

10 Q Do you know what city that's in?

11 A Yes. It's in Mechanicsville, right outside
12 of Richmond.

13 Q And do you happen to know what Carole's title
14 was at that time?

15 A She was a group manager over vendor funded
16 accounting and inventory accounting. So in my
17 inventory accounting role, I reported to her. She also
18 had merchandise payables responsibilities.

19 Q And were there people who were Carole's
20 immediate direct reports in vendor funding?

21 A Yes.

22 Q Who were those people?

23 A Trying to remember. At what point in time,
24 because people shuffled around a lot of Circuit City?

25 Q Sure. In the last quarter of 2008.

1 A I believe Kelly Silva was the vendor funded
2 accounting manager, and then there were a couple other
3 folks, Greg Lambert. He was a supervisor, and Jason
4 Garrett, he was also a supervisor.

5 Q And were there approximately 17 other people
6 who reported up through either Kelly, Greg or Jason?

7 A Yes. There was one other supervisor. Her
8 name was Susan Wilburn.

9 Q How do you spell Susan's last name?

10 A W-i-l-b-u-r-n.

11 Q Do you know where Susan is now?

12 A I do not.

13 Q Do you know where Jason is now?

14 A I do not.

15 Q Do you know where Greg Lambert is?

16 A I don't, sorry.

17 Q Do you know where Kelly Silva is?

18 A I don't. Heather may, but I don't.

19 Q When you assumed responsibilities for vendor
20 funding in January of 2009, was there somebody that you
21 reported up to?

22 A Yes, Michelle Mosier.

23 Q Do you happen to know if Ms. Mosier had any
24 responsibility with respect to vendor funding before
25 January of 2009?

1 A Yes. Carole reported to Michelle for as long
2 as I can remember.

3 Q What did you do when you assumed
4 responsibility for vendor funding in January of 2009?
5 What were you doing in that area?

6 A Immediately, I was just tasked with insuring
7 that any open funding items were reconciled, supported
8 and ultimately billed out to the vendors.

9 Q Okay.

10 A And then from there, obviously, the
11 collection of the receivables and any reporting.

12 Q And when you say reporting in this context,
13 what kind of reporting are you talking about?

14 A Just providing senior management with
15 reporting on what receivables we had outstanding and
16 what vendors.

17 Q All right. You may have told me this before,
18 and if so, I apologize, but were you in the inventory
19 accounting area also before January of 2009?

20 A Yes.

21 Q And it was in January of 2009, the change
22 that happened was you picked up this other
23 responsibility for --

24 A Yes, that's correct.

25 Q -- vendor funding?

1 MR. CAINE: Let him finish the question
2 before you answer.

3 THE WITNESS: Sorry.

4 MR. CAINE: Just in case he throws something
5 in at the end.

6 MR. GOLDWATER: I'm very tricky.

7 BY MR. GOLDWATER:

8 Q How long did you have the inventory
9 accounting responsibilities?

10 A I believe I came over there in, let's see,
11 April of 2007-ish.

12 Q And were you reporting -- who did you report
13 to when you first came over to Circuit City?

14 A When I first came to Circuit City or
15 inventory?

16 Q I'm sorry, to inventory.

17 A Carole Elliott.

18 Q So throughout the time you were at Circuit,
19 you were reporting to Carole on the inventory side?

20 A On the inventory side, yes.

21 Q Okay. And before you were in the inventory
22 accounting area, did you have another job?

23 A Yes.

24 Q What was that?

25 A Before that, I was the accounting liaison for

1 a project called MST, which was the merchandise
2 transformation.

3 Q And was that a systems project?

4 A Yes.

5 Q What kind of system was that about?

6 A It was basically to replace all of the
7 disjoined, disconnected merchandise systems that we had
8 in place.

9 Q And who did you report to in that job?

10 A Anne Fath, F-a-t-h, and Anne is with an "E"
11 on the end.

12 Q Okay. For what period of time were you the
13 accounting liaison for MST?

14 A October, 2006, through when I went to
15 inventory. It was about six months.

16 Q Okay. And before October '06, were you
17 working at Circuit City?

18 A Yes.

19 Q And what was your position or title?

20 A I was the fixed assets and project accounting
21 manager.

22 Q Project accounting?

23 A Yes, sir.

24 Q And what were your responsibilities in that
25 position?

1 A I basically oversaw all the fixed assets of
2 the company, made all the capitalization determinations
3 for projects and capital expenditures, reported, you
4 know, project accounting budgets and forecasts to the
5 CFO.

6 Q Who was the CFO at that time?

7 A At which point in time?

8 Q When you were reporting to the CFO.

9 A I didn't report to the CFO. I provided
10 reporting to the CFO.

11 Q Oh, I see. Who did you report to?

12 A I reported to Jeff McDonald.

13 Q All right. And what period of time did you
14 have the fixed assets and project accounting
15 responsibility?

16 A April, 2001 through October, 2006.

17 Q Were you at Circuit City before April of
18 2001?

19 A Yes.

20 Q And what was your job?

21 A Prior to the fixed assets and project
22 accounting, I was the expense payable supervisor.

23 Q What were your responsibilities in the, as an
24 expense payables supervisor?

25 A Oversaw the payment of non-merchandise

1 expenses, utilities, travel reimbursements, supplies.

2 Q And over what period of time were you in that
3 function?

4 A This is going to get a little sketchy.

5 Q Just your best recollection is fine.

6 A Okay. I want to say I was in that department
7 about a year or so, just to back into it, maybe April
8 of 2005 through April of 2006-ish.

9 Q And was it only from April, 2006 to October,
10 2006 that you were --

11 A I'm sorry, 2001, so then it would have been
12 April, 2000, through April, 2001.

13 Q Were you at Circuit City before you were in
14 the expense payable's supervisor position?

15 A Yes. I was the inventory accounting
16 supervisor.

17 Q Over what period of time?

18 A I was there for about a year and a half prior
19 to the expense payables role.

20 Q Okay. And were you at Circuit City before
21 you were in the inventory accounting supervisor
22 position?

23 A Yes.

24 Q What was your function?

25 A I was the internal audit supervisor.

1 Q Over what period of time?

2 A I was in that department for about, let's
3 see, I started with Circuit City -- it might be easier
4 to start that way. I'm sure I'm going to screw these
5 dates up. I started with Circuit City in December of
6 '97, and I believe, as an internal auditor, and I was
7 in that role until, I don't remember exactly, but it's
8 some time in '99, when I became the internal audit
9 supervisor. And from there, I went to inventory
10 accounting. I don't know that those dates mesh, but
11 it's close.

12 Q What were your duties in the internal audit
13 function?

14 A Well, we reported to the audit committee,
15 ultimately, and they kind of set what it was that they
16 wanted us to audit, and we went into different
17 departments throughout the company in accounting and
18 otherwise, and looked at their process and made
19 recommendations, determined risks, that type of thing.

20 Q Okay. What was the highest level of
21 education that you attained?

22 A I have a bachelor's degree.

23 Q And what year?

24 A '95, I believe.

25 Q Okay. Were you working in between college

1 and the time you came to work for Circuit City?

2 A Yes, I worked in public accounting.

3 Q At a public accounting firm?

4 A Yes.

5 Q What was the name of the firm?

6 A I worked for two firms. One was Cherry,
7 Bekaert and Holland, and the other was Todd Rivenbard
8 and Puryear.

9 Q Okay. Now circle all the way back to while
10 you were working for Circuit City. Let me ask you, up
11 through the point where you assumed the vendor funding
12 function in January of 2009, did you deal with Sony at
13 all? Did you talk to people at Sony or correspond with
14 them?

15 A I didn't necessarily talk to people at Sony,
16 but through the inventory function, itself, you know,
17 we had transactions, obviously, that related to Sony.

18 Q Okay. And I take it none of that involved
19 chargebacks or vendor funding?

20 A No. Only to the extent that, obviously,
21 there is certain programs in place that would affect
22 evaluation of inventory, so the communication would
23 really be with the vendor funding department, and if it
24 required us to do anything different in the inventory
25 system, we would.

1 Q And when you assumed responsibility in the
2 vendor funding area in January of 2009, did you have
3 contact with Sony?

4 A In January, specifically, or after --

5 Q No, while you were working at Circuit City in
6 the vendor funding function.

7 A Yes. I don't remember the first contact,
8 necessarily. But yes, we had contact in an attempt to
9 reconcile the accounts receivable.

10 Q And who did you have contact with at Sony?

11 A It was Tim. I don't know why I can't think
12 of his last name right now, but it was really through
13 our counsel, initially, at the time.

14 Q So this may actually encompass the time you
15 were working at the Trust, as well?

16 A At that point, we weren't a trust.

17 Q Oh, your initial contact and effort to
18 reconcile was while you were still at Circuit?

19 A Yes. We had already liquidated, but we were
20 not a trust at that point.

21 Q When did you -- if I'm -- I thought you said
22 you started working for the Trust around November of
23 2010?

24 A Yes.

25 Q Okay. So at some point prior to that, you

1 started to try and reconcile accounts --

2 A Correct. Tim, and Allan is the other
3 gentleman, and I'm sorry I can't remember their last
4 names.

5 Q And when you say it was through counsel, were
6 you directly speaking with Tim and Allan or were there
7 big meetings where there were lots of people present, I
8 mean, in what setting were you contacting --

9 A There weren't big meetings, but I believe the
10 way it happened was that our counsel, at the time,
11 reached out to Mr. Barrett, and I don't know who asked
12 for it or if he just volunteered it, but we ultimately
13 provided them with an accounts receivable listing, and
14 initially, we were given some feedback that
15 documentation, additional documentation was needed. So
16 I provided Tim and Allan with all of the chargeback
17 support, all of the accounts receivable support that
18 ultimately would tie back to what was in the
19 spreadsheet that was provided, and at some point in
20 2010, April or May-ish, we got a spreadsheet back from
21 them that indicated, you know, certain items that they
22 felt were not valid or disputed or that they needed
23 additional information on.

24 Q Were there continuing reconciliation efforts
25 on your part?

1 A It kind of went dead, to be honest, at that
2 point, until we became a trust.

3 MR. GOLDWATER: All right. May I have this
4 marked at Sony Exhibit 1.

5 (Sony Exhibit No. 1 was marked.)

6 BY MR. GOLDWATER:

7 Q Could you take a look, this is -- I show you
8 Sony Exhibit 1. Do you see it's a notice of deposition
9 with the last page being a list of, the last, the next
10 to the last page being an Exhibit A that has a list of
11 topics, you see that?

12 A Yes.

13 Q I understand from your counsel that you're
14 designated to testify on behalf of the Trust for the
15 first four items, is that correct?

16 A Yes, with the exception of warranty, returns,
17 pricing deductions and shortages, which Heather will
18 cover.

19 MR. GOLDWATER: Thank you. Okay, may I have
20 this marked as Sony Exhibit 2.

21 (Sony Exhibit No. 2 was marked.)

22 BY MR. GOLDWATER:

23 Q Show you what's been marked as Sony Exhibit
24 2. Do you see that it is Exhibit B to the Trustee's
25 complaint in it's lawsuit against Sony?

1 A Yes, sir.

2 Q Okay. Were you involved in the creation of
3 this Exhibit B?

4 MR. CAINE: Can I stop you for a minute? Is
5 this Exhibit B to the second amended complaint?

6 BY MR. GOLDWATER:

7 Q Correct.

8 A I didn't create the exhibit, but I provided
9 the information that ultimately, I believe, created the
10 exhibit, if that makes sense.

11 Q Okay. Is it fair to say -- okay, so you were
12 involved in the creation to the extent of providing
13 information that led to the creation of the exhibit?

14 A Yes.

15 Q And when was Exhibit B prepared?

16 A You know what, I'm not sure the exact time
17 when Exhibit B was prepared, but this, the underlying
18 spreadsheets that are in Exhibit B were prepared years
19 ago, with the exception of adding the binder number
20 column, which was added during mediation.

21 Q When you say years ago, was it in the time
22 period when you were trying to reconcile accounts with
23 Sony that you were telling me about?

24 A Yes. Not necessarily for the purpose or
25 during the time of reconciliation, but we, Circuit

1 City, the folks at the Trust, and prior to becoming a
2 trust, created this type of spreadsheet for any vendor
3 that had outstanding receivables.

4 Q And did you start preparing these
5 spreadsheets after Circuit City had announced its
6 liquidation in mid-January of 2009?

7 A That I was involved in, yes.

8 Q Were there people other than yourself who
9 were involved in preparing the spreadsheets that found
10 their way into Exhibit B?

11 A Not this specific one, other than Greg
12 Lambert, who was part of the Circuit City team that
13 remained in tact after liquidation. I mean,
14 ultimately, this comes from a much bigger system and,
15 you know, information that goes over many vendors, so
16 he would have been involved in all of that information,
17 not just specific to Sony.

18 Q What's the bigger system that you're talking
19 about?

20 A Our vendor receivable system.

21 Q Okay. And let's just focus on the
22 chargebacks so we can push away some other items and
23 won't be talking about the same thing. What data was
24 the spreadsheet relating to chargebacks in Exhibit B
25 extracted from?

1 A What system was it extracted from?

2 Q Sure, we can start there.

3 A Okay. The, basically chargebacks were
4 maintained in a system that we called vendor
5 receivables within Circuit City. That was our system
6 of record where our receivables, vendor funding
7 receivables were tracked. That system was fed by a
8 system called VMA, vendor management administration, I
9 believe, is what the acronym stood for. And so what
10 you see on this spreadsheet, I believe all of these
11 columns came directly from the vendor receivable
12 system, with the exception of the funding description
13 which came from the VMA system, and binder, which I
14 personally added in.

15 Q Do you know if anyone did any kind of review
16 or quality control review of the data that was in the
17 vendor receivable system or the VMA system?

18 A Yes, sir. The vendor funding area, in
19 general, was highly reviewed, scrutinized by the
20 external auditors, so it's just a process that on a
21 quarterly basis was reviewed by them, but also within
22 accounting, within the vendor funding accounting group,
23 that's just something they were tasked with, generally
24 speaking, of insuring that proper controls were in
25 place, things, you know, we didn't record something as

1 a receivable unless we had the proper documentation in
2 place. So yes, there was quality control over the
3 data, even as it was recorded in the system, and then
4 when the spreadsheet was prepared, which is basically a
5 data dump from the system, we just tied it back,
6 obviously, to the system to make sure that the two, the
7 dollar amounts were the same.

8 Q So after the spreadsheet for chargebacks in
9 Exhibit B was prepared, the check that was done was to
10 tie the amounts back to the system?

11 A Yes. The data came from the system, but yes.

12 Q I understand. I'm just asking what you did
13 after you created the spreadsheet for Exhibit B. Okay.
14 Did the information that was in the vendor receivable
15 system, was it fed in from the VMA system?

16 A Yes.

17 Q And so I'll understand, the VMA kept track of
18 chargebacks?

19 A Yes. It kept track of vendor funding
20 information, in general, so product addendum, product
21 exhibits, things of that nature were entered into the
22 system, but ultimately, chargebacks were created in
23 somewhat of a draft state until Circuit City performed
24 whatever they needed to perform to earn the chargeback
25 or those, you know, a specific promotion date had

1 occurred, then those items would be approved, once the
2 proper documentation had been provided to accounting,
3 it would be approved, and then interfaced over to the
4 vendor receivable system. I don't know if that answers
5 your question.

6 Q I know that you are referring to this system
7 as the vendor receivable system. My question is, was
8 the, is going to be a little bit different. While
9 Circuit City was still operating its retail stores, did
10 Circuit City make accounting entries with respect to
11 chargebacks, other than the information that got put
12 into the vendor, the VMA system?

13 MR. CAINE: Objection.

14 THE WITNESS: Could have. If, for example, a
15 buyer said, oops, I forgot to put this chargeback
16 in VMA, but we, you know, I'm just throwing out an
17 example, but we advertised this product in
18 accordance with this program, so we need to make
19 sure the entry is booked in this accounting
20 period, then again, if all the T's were crossed
21 and the I's were dotted, and the documentation was
22 appropriate, then yes, there could have been an
23 entry directly to the general ledger that didn't
24 start at VMA and go to receivable. But
25 ultimately, someone would go back and create that

1 audit trail, if you will.

2 BY MR. GOLDWATER:

3 Q And did the vendor receivable system feed
4 into an accounting, account or ledger or sub-ledger
5 maintained by Circuit City?

6 A Yes. The vendor receivable system is
7 basically the sub-ledger for receivables, but it fed
8 the general ledger, which would obviously, ultimately
9 be reflected on the financial statements. It also
10 interfaced with our merchandise payable system, which
11 is how we ultimately collected for the receivables from
12 vendors.

13 Q Did Circuit City make any, and I'm talking
14 about, again, while Circuit City was still operating
15 its retail stores. Did Circuit City make any
16 accounting entries in an accounts payable ledger or
17 account with respect to a chargeback?

18 A The way it worked was that the receivable
19 system interfaced with the payable system, and when
20 those chargebacks interfaced, ultimately, what would
21 happen is, for any vendor, but specifically for Sony,
22 those chargebacks would be used as offsets against
23 outstanding invoices; therefore, reducing, ultimately,
24 the payment to Sony.

25 Q Okay. Is it fair to say that chargebacks

1 would act as a debit to Circuit's accounts payable
2 account?

3 A Yes. There were instances where we collected
4 chargebacks via check. So in that case, it wouldn't
5 have -- they would remain in a receivable state until
6 we received the check, and then we would clear the
7 receivable, but generally speaking, for Sony, they were
8 offset via the invoice and would be a debit to
9 payables.

10 Q The check instances that you're telling me
11 about, those are not Sony instances, those are other
12 vendors?

13 A I don't want to tell you that it's never
14 happened with Sony, because there's been so many
15 chargebacks over, you know, the history of the
16 relationship between the two, but I have seen that we
17 have received checks for receivable that did not flow
18 through payables from vendors in general.

19 Q I understand, and as you sit here, all I'm
20 asking you is whether you were aware of an actual
21 instance in which Sony sent a check in exchange for a
22 chargeback?

23 A Not in exchange for a chargeback, but I do
24 believe they sent checks to Circuit City if the vendor
25 flipped into what we called a debit balance. It could

1 have been a result of the difference between the
2 payables balance and the credits outstanding that have
3 been based on returns. I mean, there's a lot of
4 different scenarios. I can't think of one in
5 particular, but it could have.

6 Q No, I understand it could have. I just
7 asked, do you think that happened with respect to Sony,
8 that it flipped into a debit balance?

9 A I'm not sure. I mean, I don't know what
10 period of time, specifically, you're asking about. I
11 don't recall any in the last, say, couple of years that
12 Circuit City was in business.

13 Q Who was it who was responsible for accounting
14 for chargebacks at Circuit? Was it the same people you
15 told me about in the VMA group?

16 A In the vendor funding group, yes.

17 Q I'm sorry, the vendor funding group.

18 A Yes.

19 Q By the way, when there is a, when a
20 chargeback is recorded, and it serves as a debit to the
21 accounts payable account, is there a corresponding
22 entry somewhere else in the ledger?

23 A Yes. When it moves from the receivable over
24 to the payable system, then it would offset the
25 receivable.

1 Q Okay. While Circuit City was operating its
2 retail stores, did Circuit City keep records of its
3 accounts payable that it owed to vendors?

4 A Yes.

5 Q And did Circuit have at that time, the
6 ability to generate an accounts payable report with
7 respect to a particular vendor like Sony?

8 A Yes.

9 Q And I want to show you a document. May I
10 have this marked as Exhibit 3, please.

11 (Sony Exhibit No. 3 was marked.)

12 BY MR. GOLDWATER:

13 Q Okay. Show you a document marked as Sony 3.
14 These are excerpts of a very large spreadsheet the
15 Trust produced to us. It was just hundreds of pages,
16 so this is not every page of it, but I just wanted to
17 ask you a couple of questions about it. Is this an
18 example of an accounts payable report that Circuit had
19 the ability to generate with respect to Sony?

20 A Yes.

21 Q Okay. And if you'll look several pages in,
22 do you see there is a page that's closer to the back
23 than the front, but there's a page marked CCLT02148?

24 A Yes.

25 Q Okay. Do you see in column D, that there are

1 several entries that start with the letters AV, and
2 then a number?

3 A Yes.

4 Q Are those entries reductions in Circuit
5 City's account payable to Sony?

6 A Yes.

7 Q Okay. And is the reason for those reductions
8 chargeback credits?

9 A Yes.

10 Q Okay. While Circuit was still operating its
11 retail stores, did Circuit keep records of its accounts
12 receivables?

13 A Yes.

14 Q And did Circuit have, at this point in time,
15 the ability to the generate accounts receivable report
16 with respect to a particular counter-party?

17 A Yes.

18 Q And at this point in time, did Circuit
19 maintain an account receivable ledger or sub-ledger
20 with respect to Sony?

21 A Yes.

22 Q Okay. And did Circuit ever generate an
23 account receivable report with respect to Sony while it
24 was still operating its retail stores?

25 A Yes. Circuit would have generated a

1 receivable report for all vendors.

2 Q Have you ever seen an account receivable
3 report with respect to Sony that was generated while
4 Circuit was still operating its stores?

5 A Yes.

6 Q Okay.

7 A With respect to all vendors, not just Sony.
8 Sony would just happen to be a line item on the report.

9 Q And would the Trust have the ability to
10 generate that report from Circuit City's records today?

11 A For what period of time?

12 Q 2008, 2009?

13 A For all vendors or for Sony, specifically?

14 Q For Sony, specifically.

15 A Yes. That's how this was created, Exhibit 1,
16 I believe. Is that right?

17 MR. CAINE: Look at the exhibit number.

18 THE WITNESS: Exhibit 2, sorry.

19 BY MR. GOLDWATER:

20 Q Okay. And do you happen to know if the Trust
21 had produced any such account receivable report with
22 respect to Sony in this lawsuit?

23 A Produced to Sony?

24 Q Correct.

25 A Yes.

1 Q So it's -- okay. What does it look like?
2 Will it be will -- will it have a cover page that's
3 similar to Exhibit, Sony Exhibit 3, where it will say
4 Sony AR data?

5 A No.

6 Q Well, how would we recognize it? What will
7 it look like on the front?

8 A It will look like Exhibit 2, minus if it were
9 to come directly from the system, it would not have
10 this AR summary page. I created this AR summary page
11 to just summarize the data that came from this system.
12 So it would look like the pages that follow before you
13 get to warranty, et cetera.

14 Q Pages 5 through 11 of Exhibit 2?

15 A Yes. The exception being that column that
16 says funding description, because that was really added
17 to make it easier for Sony and Circuit City to
18 understand what each of the line items are. That
19 information is in the actual chargeback documents that
20 were produced to Sony and provided, you know, whenever
21 they were billed, those documents would include this
22 funding description, but our vendor receivable system
23 didn't maintain that particular column of information.

24 Q Do you know if the Trust has produced that
25 kind of report in addition to what we have as part of

1 Exhibit B to the complaint?

2 A What do you mean by that type of report?

3 Q The Sony account receivable report that you
4 were just telling me you could generate from the
5 records maintained by the Trust?

6 A Since we became a trust?

7 Q Correct.

8 A I'm not aware of it. I believe we provided a
9 spreadsheet very similar to this one.

10 Q Okay. Okay. Looking at this Exhibit 2, and
11 looking at that cover page that's page 3 of 76, did you
12 say you prepared this page?

13 A Yes.

14 Q And what does AR mean in the context of AR
15 summary there?

16 A Accounts receivable.

17 Q And you're saying that was generated from the
18 accounts receivable report with respect to Sony?

19 A This cover page?

20 Q I'm sorry, the chargeback and data that
21 follows it.

22 A Right. The chargebacks came directly from
23 the vendor receivable system, with the two
24 modifications that I noted previously, which are the
25 binder number column, and the funding descriptions,

1 which came from VMA.

2 Q How hard would it be to print out that report
3 minus the columns that you told me about? Is that
4 something you --

5 A It's not a printable report. It's just
6 something you query, dump it into Excel, and then I can
7 print it.

8 Q I see.

9 MR. GOLDWATER: It's not a question for you,
10 but it's for counsel. I don't think we've
11 actually seen that, and so we'll request it.

12 MR. CAINE: You haven't seen what?

13 MR. GOLDWATER: This underlying report of
14 which Exhibit B was prepared.

15 MR. CAINE: I think we produced everything
16 that was in the binder, including this.

17 MR. GOLDWATER: I don't know what binders
18 you're talking about. I'm talking about the
19 report that Ms. Fose has told us about.

20 THE WITNESS: It's this, minus these two
21 columns. That would be the only difference.

22 MR. CAINE: What is Exhibit 2, I believe that
23 we've produced.

24 MR. GOLDWATER: I mean, I made my request.

25 MR. CAINE: Okay.

1 MR. GOLDWATER: Do what you want with it.

2 BY MR. GOLDWATER:

3 Q Okay. When you assumed your vendor funding
4 responsibilities in January of 2009, did you already
5 know what chargebacks were?

6 A Yes.

7 Q And how did you learn about chargebacks?

8 A Well, I had been with the company since 1997,
9 through one, internal audit. We kind of knew a little
10 bit about everything going on within accounting and the
11 company, itself. I had worked in inventory accounting
12 before, as I mentioned, which has always worked with
13 vendor funded accounting, and again, through my more
14 recent work with inventory accounting.

15 Q Did you ever have, before you assumed
16 responsibility for vendor funding in January of 2009,
17 did you have any responsibility for processing or
18 submitting chargeback claims?

19 A No.

20 Q I know you told me that Mr. Lambert at some
21 point helped you with some vendor funding items after
22 Circuit announced its liquidation. Have you consulted
23 with anyone else who was in that department to help you
24 with vendor funding work?

25 A Vendor funding work in general or specific to

1 Sony?

2 Q Specific -- well, in general.

3 MR. CAINE: Objection.

4 THE WITNESS: Consulted with, I can't -- can
5 you be more specific?

6 BY MR. GOLDWATER:

7 Q Sure. Have you spoken to anybody who used to
8 work in the vendor, VMA function at Circuit to help you
9 with your work in, for the Trust?

10 A Since Circuit City liquidated?

11 Q Correct.

12 A Greg actually reported to me, until maybe
13 July of 2009-ish, I think. So obviously, I worked with
14 him. There were two other folks that worked under
15 Carole Elliott that also assisted with vendor funding,
16 in general. I don't recall anything specific to Sony.
17 Cyndi Lucente, L-u-c-e-n-t-e, and I believe she spelled
18 Cyndi, C-y-n-d-i, and John Michael.

19 Q Understanding that you weren't working in the
20 VMA function, I'm going to ask you questions about the
21 process by which Circuit submitted chargeback claims.
22 So while Circuit City was still operating its stores,
23 how did Circuit City determine whether it was entitled
24 to claim the chargeback?

25 A Can I just correct you on one thing, it's not

1 the VMA area, it's the vendor funding. They're not the
2 same thing.

3 Q My mistake. I'm sorry.

4 A Okay. I just wanted to clarify.

5 Q Thank you.

6 A Well, when I took over in January of 2009,
7 because so many people had been let go, like I said,
8 one of the first things we were tasked with was getting
9 our arms around what outstanding receivables we had,
10 and insuring that anything that hadn't been billed to
11 the vendor was billed to the vendor. So because the
12 billers, for lack of a better term, had been let go, I
13 was responsible for calling each of them back and
14 having them come back in, gather the appropriate
15 documentation, and ultimately bill all the vendors that
16 had chargebacks that were not billed at that point in
17 time. So I'm very familiar with that process. And the
18 process that leads up to that is really working with
19 the buyers, insuring that we have the appropriate
20 documentation in place, and if that documentation is in
21 place, then accounting would approve the chargeback and
22 then that ultimately would be how the bills were
23 generated and then submitted for the most part via
24 e-mail from the billers within the vendor funding
25 group.

1 Q Okay. Thank you.

2 A Sure.

3 Q That's a very fulsome answer. I'm asking you
4 a much smaller question about, let me try to break it
5 down a little bit. Who in the first instance had the
6 responsibility of determining whether Circuit was
7 entitled to claim a chargeback from Sony, was it the
8 buyer?

9 MR. CAINE: Objection.

10 THE WITNESS: I'm not sure I understand the
11 question totally. In the first instance, meaning
12 they created the chargeback?

13 BY MR. GOLDWATER:

14 Q That's fine. I'll withdraw it. How did
15 Circuit determine whether it was entitled to claim a
16 chargeback?

17 A I guess starting, what I would consider the
18 beginning of the process. Sony and the buyer would
19 have communication. There would be an offering,
20 whether it be a program letter, a full product
21 addendum, which is more formal, obviously. There were
22 things called sales news, and other, like, promotion
23 announcements that would go out to the buyers. There
24 may just be e-mail communication between the buyers and
25 Sony representatives, where Sony would say, we will

1 offer X, and I'll just give an example. For every unit
2 you sell from January 1st through January 31st, we'll
3 give you \$10 a unit. And then the buyer would create a
4 chargeback based on that, with the appropriate dates,
5 the dollar per unit, the specific model that it related
6 to. And then once that time had passed, so at that
7 point, January 31st, there would be a look at what
8 sales had actually occurred during that time for that
9 model, a calculation would be done in VMA that would be
10 pretty simple math, \$10 per unit, times the number of
11 units sold, and that would be the ultimate chargeback.
12 When it came to accounting to be processed, it would
13 have to have whatever it is, the program letter, the
14 e-mail from Sony, whatever it is that supported the
15 general idea of the program itself, as well as what
16 Circuit City did to, I guess, entitle them to that
17 funding. And in that instance, it would be what were
18 your sales for that period of time.

19 Q Who was the person who determined whether
20 Sony had done the things it was required to do to
21 become entitled to the chargeback?

22 MR. CAINE: Objection.

23 THE WITNESS: It would be multiple people,
24 really. I mean, I think it would start with a
25 buyer initiating the chargeback, and then it would

1 be someone in vendor funding accounting that would
2 look to make sure we actually did what we were
3 suppose to do, more like a control process. And
4 depending on the dollar amount, it may rise to
5 another level. So for example, and I don't
6 remember what the dollar thresholds were, because
7 that really wasn't in, something I was involved
8 in, but at certain dollar amounts, it would
9 require not just the folks in the vendor funding
10 group to approve, but also Carole Elliott may have
11 to approve. If it's over another dollar amount,
12 then Michelle Mosier may have had to approve. So
13 it was something that there was, you know, an
14 approval process in place within accounting.

15 BY MR. GOLDWATER:

16 Q Okay. A Sony chargeback program, I take it,
17 was typically in effect between a specified start date
18 and a specified end date?

19 A It would depend on the type of program, but
20 in the example I gave, sales-based, sometimes referred
21 to as sales news, sometimes referred to as trailing
22 credit, that's how they operated. It would be a
23 certain period of time, a start date and an end date,
24 generally, for specified one or more brand models.

25 Q Okay. So you've told me that, obviously,

1 Circuit had to do whatever the program called for it to
2 be to be entitled to a chargeback. Did Circuit also
3 have to submit the chargeback to Sony to become
4 entitled to it?

5 MR. CAINE: Objection.

6 THE WITNESS: To get paid, I would say yes.
7 I think they were entitled to it when they
8 performed the task or the triggering event that
9 was required according to the program. Sony was
10 certainly aware of the programs that they had
11 offered, and I have seen documents where they
12 would actually reach out to Circuit City and ask,
13 where's the chargeback for a specific program,
14 because it affected their forecast, according to
15 the documents, their revenue forecast. So there
16 was, I think, constant communication between the
17 Circuit City and Sony to insure that, you know,
18 Sony was, or that Circuit City was actually
19 billing for the programs that Sony had offered.

20 BY MR. GOLDWATER:

21 Q So is there anything other than performing
22 the program requirements, and either submitting a claim
23 to Sony or somehow advising Sony that you had done what
24 was called for, are those all the things that Circuit
25 had to do to be entitled to a chargeback?

1 MR. FEINSTEIN: Objection.

2 THE WITNESS: That's my understanding. Yes.

3 BY MR. GOLDWATER:

4 Q There's nothing else that you're aware of
5 that Circuit had to do?

6 A No, sir.

7 Q And when you assumed responsibility for
8 vendor funding in January of 2009, was there any change
9 in how Circuit determined whether it was entitled to a
10 chargeback?

11 A Not that I'm aware of, no.

12 Q Was there any change in the way Circuit
13 submitted claims to Sony?

14 A No. The only change, really, was the fact
15 that we were missing some billers for a couple of weeks
16 until we had to call them back in and have them go
17 through the billing process. There may have been, you
18 know, certain buyers that could have been involved with
19 Sony, specifically, that were let go, and other buyers
20 may have had to jump in and offer assistance, but the
21 process didn't change.

22 Q When you're talking about billers, are those
23 the people who worked in the vendor funding function?

24 A Yes. There were a lot of different people in
25 the vendor funding that had a lot of different

1 responsibilities, and billers, I'm sure, isn't their
2 exact title, but that's what they did. They billed the
3 vendors.

4 Q Gotcha. Okay, could you take a look at
5 Exhibit 2, Exhibit B to the second amended complaint.

6 A Sure.

7 Q Could you turn, please, to page 5 of 76.

8 A Yes.

9 Q All right. Do you see there are column
10 titles across the top of this page?

11 A Yes.

12 Q And do you see that the fifth from the left,
13 fifth column from the left is titled trandate, T-r-a-n-
14 d-a-t-e?

15 A Yes.

16 Q What is that date?

17 A That's a good question. The transaction date
18 relates to processing within the vendor receivable
19 system. Often when chargebacks are pushed from the
20 vendor receivable system to the payable system, a
21 trandate, you know, will be populated at that point.
22 That really has to do with kind of the last, I guess,
23 modification date, if you will. So the last time this
24 receivable item was touched within the vendor
25 receivable system.

1 Q How does the -- let me just ask you this
2 question. Would the last time it's touched within the
3 vendor receivable system be when the claim gets sent
4 out to Sony?

5 A When it gets billed?

6 Q Yes.

7 A Not necessarily, no. Because the VMA
8 interfaces with vendor receivables. So that could be
9 the last time it's touched. I mean, if there's no
10 reason to go back and make any change, it could be that
11 after it's billed, I've seen documents where Sony
12 and/or any other vendor could come back and say we
13 don't agree with this. Our sales show you sold 152
14 units, you billed us for 200 units, so I need you to go
15 in and you need to modify the chargeback and resend it
16 to us. So at that point, the receivable would be
17 adjusted, and the transaction date should be updated to
18 reflect that.

19 Q Okay. In order for the trandate to show a
20 date, I take it something has to be entered into
21 Circuit's accounting system?

22 A Well, it interfaces from VMA into the vendor
23 system, so I think that's the initial transaction date.

24 Q Okay. The only -- there's only one -- is
25 that what this stands for, by the way, transaction

1 date?

2 A Yes.

3 Q I see. And what's the transaction that
4 you're referring to when you tell me about the
5 trandate?

6 A In that instance, it would be the transaction
7 of a chargeback going, and interface happening between
8 VMA and the vendor receivable system.

9 Q And at what point in the process of claiming
10 a chargeback is there an interface between the VMA and
11 vendor receivable system?

12 A I believe that occurs on a monthly basis, and
13 what I'm not sure of, to be honest, and unfortunately,
14 I don't have an IT manual that tells us all the
15 different date triggers in the system, but I assume it
16 picks up this date from the VMA when it interfaces,
17 because as you can see, they're not month-end dates,
18 and the interface would have happened on a monthly
19 basis.

20 Q I'm not sure that you actually answered the
21 question. Is there -- what is the event that happens
22 that causes the trandate to be entered in the system?

23 A It's no entered. It's systematic. So when a
24 chargeback moves from VMA into receivables, there would
25 be a transaction date. I believe that transaction date

1 comes from the VMA system when it was last touched,
2 let's say approved or whatever the state is. If the
3 chargeback were then to be moved over to the payable
4 system, it should get a new transaction date, meaning
5 when it interfaces.

6 Q Okay. You're getting too complicated for me.

7 A Sorry.

8 Q Just trying to stick with one stage at a
9 time. So the last time somebody makes an -- when the
10 VMA system is completed, then there is an interface
11 with the VR system, is that correct?

12 A Yes.

13 Q And that date, it shows up as the trandate in
14 this spread sheet?

15 A That's my understanding.

16 Q Okay.

17 A But what I was trying to say is that we don't
18 have, like, a vendor receivables IT manual, which would
19 be what would really tell you about dates, which are
20 kind of like an IT audit function within a system, but
21 that's my understanding. It's not a date that you're
22 going to see on the chargeback support. It's a system
23 date.

24 Q Okay. Do you see the, I guess that's the
25 seventh column from the left in Exhibit 2?

1 A Yes.

2 Q Is titled "type"?

3 A Yes.

4 Q And I know from an interrogatory answer that
5 you said that Circuit City added this column for trust
6 reference to distinguish between a chargeback and a
7 rollback?

8 A Yes, you're correct. I missed that earlier
9 when I said what came from the system, but yes, I would
10 have added that column.

11 Q While Circuit was still operating its retail
12 stores, did Circuit's records draw any distinction
13 between a chargeback and a billback?

14 A Yes. I believe that the column that says
15 rectype, which is one, two, three columns over, I
16 believe all double A's are chargebacks, and then
17 there's some other designation, which escapes me right
18 now, for billbacks.

19 Q And what is the distinction between a
20 chargeback and a billback?

21 A Billbacks, generally speaking, are set up at
22 the actually inventory receipt level. So there's
23 typically like an overarching program that says for
24 every one of this particular item that you purchase, we
25 will give you three percent, or we will give you \$10

1 per unit, and that just goes on every time you purchase
2 it, that's what you get. So internally, I can't really
3 tell you why they decided to call it a billback, but
4 that's what it's called.

5 Q Is there any accounting significance as to
6 whether a claim as described is charged as a chargeback
7 or a billback?

8 A The significance, really, is that it occurs
9 at the point of purchase or at the point of receipt, so
10 it's automatically reflected in the value of the
11 inventory. So it would be a reduction to the inventory
12 value that Circuit City carried on its books.

13 Q And it would be a debit to the account
14 payable?

15 A Yes. Well, no, no, no. Not a debit to the
16 payable. What happens is the value of the inventory is
17 reduced. You're not necessarily debiting accounts
18 payable, because the -- you're debiting receivable.
19 You see what I mean? So you get an invoice, and that's
20 what would be reflected in accounts payable, but this
21 billback, just the three percent, let's use that as an
22 example, that would be a reduction to inventory and an
23 increase in your receivables.

24 Q You see the, I think it's the ninth column to
25 the left, titled net receivable?

1 A Yes.

2 Q What was a net receivable?

3 A It's just the dollar amount of the chargeback
4 or a billback.

5 Q Was there actually any netting involved in
6 this?

7 A Not that I'm aware of. I'm not really sure
8 why the system uses that title.

9 MR. GOLDWATER: Okay. I want to just go over
10 in some more details these headings. Can you mark
11 that as Sony 4, please.

12 (Sony Exhibit No. 4 was marked.)

13 THE WITNESS: Any chance we could take a
14 quick break?

15 MR. GOLDWATER: Oh, yeah, sure. Absolutely.
16 We'll do it right now.

17 THE WITNESS: Thank you.

18 (Brief recess was taken.)

19 BY MR. GOLDWATER:

20 Q Before we broke, I was asking you about the
21 net receivable column there.

22 A Yes.

23 Q And is the -- and you were telling me that it
24 refers to the amount of the chargeback, is that right?

25 A Yes.

1 Q Okay. And was that amount put there, did the
2 amount of the chargeback reflect the amount of the
3 chargeback, regardless of any purpose to which the
4 chargeback could be put?

5 MR. CAINE: Objection.

6 THE WITNESS: I'm not sure I understand.

7 BY MR. GOLDWATER:

8 Q Sure. Take a look at, take a look at the
9 fifth funding description line down. Do you see it
10 says \$50 trailing credit to help sell through, and it
11 has a model number?

12 A Yes.

13 Q And there's another reference, I guess, two
14 lines later, the seventh line down for Sony support of
15 trailing credits on certain model numbers?

16 A Yes.

17 Q And do you have an understanding of what's
18 meant by a trailing credit?

19 A Yes.

20 Q And what's your understanding?

21 A My understanding is it's where Sony would
22 provide a specified dollar amount per unit sold over a
23 specified time frame.

24 Q And you're not aware of any restrictions on
25 the use or application of the credits?

1 A No, I'm not.

2 Q Okay. So if Sony -- if a Sony program
3 offered \$100 in trailing credits, would Exhibit B list
4 \$100 as the amount of the receivable due from Sony?

5 MR. CAINE: Objection.

6 THE WITNESS: Yeah, I'm not sure I'm
7 following you.

8 BY MR. GOLDWATER:

9 Q I'm just trying to understand, since you -- I
10 asked you if you knew of any limitations on the use of
11 a trailing credit, and you told me that you didn't.

12 A Right.

13 Q So now I'm asking you, does that mean if Sony
14 offered \$100 in trailing credits as the benefit in a
15 program, when -- for purposes of creating -- and
16 Circuit City then fulfilled the program requirements,
17 the \$100 would be the amount of the net receivable that
18 Circuit would put in Exhibit B?

19 A Yes, if that's the total of the dollar per
20 unit times the number of units sold is \$100, then yes.

21 Q Yes, okay. So whatever the amount of the
22 benefit of the program, you would put it in regardless
23 of any, anything else about it?

24 A Yes.

25 Q Do you see the line just to the right of net

1 receivable, has the title pre, p-r-e, slash post,
2 p-o-s-t?

3 A Yes.

4 Q And I know from the interrogatory answers
5 that this is, it says this is a Circuit City internal
6 reference to distinguish pre versus post petition, does
7 that sound right?

8 A Yes, yes.

9 Q And is that reference to petition a shorthand
10 for the date of Circuit City's bankruptcy petition?

11 A Yes.

12 Q How did the Trust determine whether a
13 chargeback was a pre or post petition chargeback?

14 A It would be based on the earn or effective
15 date, depending on what you want to call it, for the
16 individual chargeback. So if the chargeback were
17 written for January 1st, 2009 through January 10th,
18 2009, that would be post-petition. If it were prior to
19 bankruptcy dates, it would be pre-petition.

20 Q So was the only event that had to occur
21 before the petition date, Circuit City's performance of
22 the program requirements? Is that what made something
23 a pre-petition chargeback?

24 A Yes, the performance.

25 Q And so in a situation where Circuit satisfied

1 program requirements before the petition date, but
2 submitted a claim to Sony after the petition date, did
3 the Trust classify that as a pre-petition chargeback?

4 A Yes.

5 Q And what was the rationale for that?

6 A The performance occurred prior to the
7 bankruptcy, so it was earned pre-petition.

8 Q Was there anybody who was responsible for
9 making determinations whether chargebacks should be
10 categorized as pre or post-petition?

11 A The vendor funding group, when they were
12 looking at the support, always, dates were something
13 they would review. So if there were any performance
14 dates that, you know, were post-petition, and for some
15 reason the chargebacks were marked as pre-petition,
16 then obviously, that would be a question mark, and they
17 would ultimately correct it, but the buyers had a hand
18 in it, but ultimately, accounting would have been
19 responsible for the final determination.

20 Q So obviously, Circuit had to satisfy the
21 program requirements before it would be entitled to a
22 chargeback, right?

23 A Yes.

24 Q Did Circuit have to submit a claim to Sony
25 before it became entitled to a chargeback?

1 MR. CAINE: Objection.

2 THE WITNESS: I believe we were entitled at
3 performance.

4 BY MR. GOLDWATER:

5 Q Okay. Do you know if there was any
6 requirement that Circuit submit a claim to Sony to
7 become entitled to a chargeback?

8 MR. CAINE: Objection.

9 THE WITNESS: I'm not aware of any
10 requirement, but through the review of just
11 documents in general related to this case, I have
12 seen e-mail communication, I believe it was just
13 within Sony, that discussed that there was a one
14 year time frame to submit the chargeback.
15 However, they -- I saw documents where they were
16 pushing for us to give them the chargebacks,
17 again, because of the impact on their revenue
18 forecast.

19 BY MR. GOLDWATER:

20 Q Could you read back my question?
21 (Court Reporter read back, "Do you know if
22 there was any requirement that Circuit submit
23 a claim to Sony to become entitled to a
24 chargeback?")
25

1 BY MR. GOLDWATER:

2 Q Is the answer to that one that you're not
3 aware of any such requirement?

4 MR. CAINE: Objection.

5 THE WITNESS: I've seen documents where it's
6 been discussed, but I'm not aware of any hard fast
7 rule, for example, when I took over vendor funded
8 accounting, where anyone said, you need to get
9 these chargebacks out within X number of days.

10 BY MR. GOLDWATER:

11 Q Okay. If a Sony program was in effect for a
12 period of time that was both before and after the
13 petition date, how did the Trust classify that
14 chargeback?

15 A It would be split. They would calculate what
16 portion was earned pre-petition, what portion was
17 earned post-petition.

18 Q Again, based on Circuit's performance as
19 opposed to when a claim was submitted?

20 A Yes.

21 Q Did Circuit make the entry into the VMA
22 system when it was entitled to the chargeback?

23 A Chargebacks were created at a draft state by
24 the buyers before they were entitled, and they just
25 weren't approved and pushed through the process until

1 the performance occurred.

2 Q Okay. So after performance is when they were
3 pushed through to the, I'm going to get this wrong, the
4 VR, the vendor receivables account?

5 A Yes.

6 Q Thank you. So by the time that showed up in
7 the vendor receivable account, they had already,
8 Circuit City had already earned the chargeback?

9 A Right, in the vendor receivable system, yes.

10 Q Okay. So now I think if we circle back to
11 that trandate, if that's the date that the VMA entry
12 got pushed through to the VR system, we know that
13 Circuit had earned the chargeback by the trandate?

14 A I don't want to say that for sure, but in
15 theory, yes. Again, I think this date, because it
16 doesn't come from effective dates in the chargebacks,
17 and it doesn't come from a bill date on the chargeback,
18 I don't want to say for sure. But certainly, to get
19 into the vendor receivable system, it had to be
20 approved, which means accounting had felt Circuit City
21 had earned the chargeback.

22 Q You see the next to last -- I'm sorry, the
23 second column from the right of Exhibit 2, still on
24 this page five of Exhibit 2, it's titled funding
25 description?

1 A Yes.

2 Q And I think you told me that this one was
3 added from the VMA, by the VMA department?

4 A From the system, from the VMA system, yes.

5 Q I see. The VMA system had a funding
6 description field and that was added to Exhibit B?

7 A Yes, because funding description is not in
8 the vendor receivable system.

9 Q And how did the funding description get into
10 the system? Was it the buyer who did that?

11 A Into the VMA system?

12 Q Yes, I'm sorry.

13 A Yes.

14 Q Was the buyer required to provide any
15 particular information in the funding description?

16 A I don't know that there was a hard fast
17 requirement, but this ultimately shows up on the
18 chargeback documents that are submitted to Sony when
19 the chargeback is billed, and they're all a part of the
20 binders and things we produced.

21 Q Okay. Was the buyer required to attach as
22 back-up, the program document?

23 A Yes, in order for it to be approved.

24 Q And did Circuit maintain those program
25 documents in their records?

1 A Yes.

2 Q So in theory, for each of the chargebacks
3 that are showing up on Exhibit B, there's a program
4 document that corresponds to those?

5 A Yes. There's support for every chargeback,
6 and that corresponds to this binder number that was
7 added.

8 Q Ms. Fose, if you would please take a look at
9 the interrogatory responses that have been marked as
10 Sony Exhibit 4, and if you would, please, turn to page
11 seven. Just -- I just want to orient you. These are
12 interrogatory responses provided to us by the Trust in
13 response to a discovery request.

14 A Sure.

15 Q Do you see at the bottom of page seven, there
16 is a column title called category, and a description
17 that says CC Trust internal categorization of
18 receivables?

19 A Yes.

20 Q I actually never saw that field on Exhibit B.
21 Do you know whether that actually appears on Exhibit B
22 or any version of Exhibit B?

23 A I actually don't see it on here either, but I
24 know it's in a spreadsheet that I thought we produced.
25 It ties back to the complaint, that section that talks

1 about the funding categories.

2 Q So you have a version of a spreadsheet with
3 similar data to Exhibit B that had a field or a column,
4 I'm sorry, called category?

5 A Yes.

6 Q And what are the categories that the Trust
7 allocated receivables among?

8 A I don't have them memorized, but I know
9 they're in the second amended complaint with, you know,
10 subtotals for each category. I remember seeing that in
11 there.

12 Q Who was it who did the allocating among the
13 categories?

14 A I did it.

15 Q Is it -- that field was just suppressed for
16 some reason in printing out Exhibit B?

17 MR. FEINSTEIN: Objection.

18 THE WITNESS: I can't speak to that.

19 BY MR. GOLDWATER:

20 Q You don't know why it's not here, in other
21 words?

22 A No.

23 Q Do you know if there were other fields that
24 are on a version of the spreadsheet that you have seen
25 that are not visible on Exhibit B to the complaint?

1 A I don't think so.

2 Q Do you have any recollection of suppressing
3 any fields in that spreadsheet?

4 A No.

5 Q Okay. Would you take a look at the eighth
6 column from the left on page five of Exhibit 2. It's
7 titled, DESCR.

8 A Yes.

9 Q I just want to ask you, about 12 lines down,
10 and again, about 16 lines down, there are some entries
11 that have numbers, followed by the word "void", v-o-i-d
12 in all caps, do you see those?

13 A Yes.

14 Q Is there -- what's the significance, if any,
15 of the word "void" in those entries?

16 A The chargeback was voided, so in order to
17 reflect the appropriate receivable balance, we're just
18 showing a credit where the chargeback amount was
19 reversed.

20 Q I see. It's a reverse chargeback?

21 A Yes.

22 Q I see.

23 A Could have been reissued, just FYI.

24 MR. GOLDWATER: Okay. If I could have this
25 marked as Exhibit 5.

1 (Sony Exhibit 5 was marked.)

2 BY MR. GOLDWATER:

3 Q Okay. I show you a group of documents marked
4 as Sony Exhibit 5. It's a group -- it's a group of
5 documents with Trust production numbers 30119 through
6 30136. And take as much time as you need to take a
7 look at those. My question when you're done looking at
8 them is whether these are documents relating to Circuit
9 City chargeback number 97769.

10 A I'm having trouble reading the last one, but
11 it appears that they are.

12 Q I had the same trouble. Would you please
13 take a look at the document with Bate's number 30120 in
14 lower right?

15 A Sure.

16 Q You see that's a document titled, chargeback
17 cover sheet?

18 A Yes.

19 Q What is a chargeback cover sheet?

20 A It's just a cover sheet for the chargeback,
21 typically produced as part of the billing.

22 Q It's part of the standard procedure in
23 processing the chargeback claim, to produce a cover
24 sheet?

25 A Typically, yes.

1 Q Did Circuit, when it was operating its
2 stores, send the cover sheet to the vendor from whom it
3 was claiming the chargeback?

4 A Typically, yes.

5 Q Was there also a cover sheet for billbacks?

6 A I don't recall.

7 Q And I take it you wouldn't know the answer to
8 the other categories, I'd have to ask Ms. Ferguson
9 about those?

10 A Correct.

11 Q Was vendor -- VMA, did that stand for vendor
12 management administration?

13 A Yes.

14 Q Okay. Was VMA responsible just for
15 chargebacks or for other kinds of claims to vendors?

16 A VMA is the system, itself, and I think I said
17 this earlier, but there was just general information
18 about the, I guess, relationship between Circuit City
19 and its vendor, which included vendor funding.

20 Q You did say that.

21 A Yeah.

22 Q Okay. Do you see on page 30120, the first
23 entry says, CB number?

24 A Yes.

25 Q Okay. And is 97769 a number that Circuit

1 City had assigned as a chargeback number to this
2 particular claim?

3 A Yes.

4 Q Okay. And do you see the next -- I'm sorry,
5 the one, two, three, fourth line down says "class"?

6 A Yes.

7 Q What did class refer to?

8 A Class was a Circuit City internal
9 categorization of merchandise product. So I can't
10 think of one right off the top of my head, but it could
11 be like 42 inch LCD TVs would have had a class, laptops
12 would have had a class. I don't remember what these
13 two numbers stand for, 217 and 146, but --

14 Q It's a product class?

15 A Yes.

16 Q I see. Do you see that a couple of lines
17 below class, there is two letters, PP, do you see that?

18 A Yes.

19 Q And what did "PP" mean in this context?

20 A I believe that's price protection, and in
21 this case, the "N" is no.

22 Q Is it -- I'm just going to ask you this. Did
23 "PP" ever refer to something called proof of
24 performance?

25 A I don't this think so, no.

1 Q Do you see under "PP", there is a caption,
2 effective date?

3 A Yes.

4 Q Okay. And here, that's December 27, 2008?

5 A Yes.

6 Q And what did the effective date signify?

7 A In this particular instance, it's the end
8 date of the program. So it looks like the program ran
9 from 12/14/08 to 12/27/08.

10 Q Would that be typical for the effective date
11 to be the program end date?

12 A Should be, in theory, but I don't have them
13 all memorized, so I can't say for sure. But that would
14 be logical.

15 Q Do you see under effective date, there's a
16 caption that says "PA", and then there's a symbol for a
17 number?

18 A Yes.

19 Q And what does the "PA" number refer to?

20 A Product addendum.

21 Q And do you see below that there is a "PE"
22 sign, or then a sign for number?

23 A Yes.

24 Q And what did that refer to?

25 A Product exhibit.

1 Q And just for the record, can you tell me what
2 you understood a product addendum to be?

3 A The majority of the product addendums that
4 I've seen refer to specific programs. Typically,
5 there's a product addendum associated with a billback
6 because it's, like I said, an overarching program that
7 kind of goes over a longer period of time than say an
8 individual chargeback like this one that's only for a
9 couple of weeks or whatever.

10 Q And what --

11 A It's basically a program document, if you
12 will, program agreement.

13 Q Thank you. And what is a product exhibit?

14 A That is where specific products may be
15 listed, so specific models.

16 Q Do you see under the last caption on that
17 page, it says "origin"?

18 A Yes.

19 Q And what is that a reference to?

20 A Each of these pages is something different,
21 like the confirming letter is the page that follows,
22 030121, the support starts, I guess that's up for
23 interpretation, but I would say it starts with 030123,
24 and then the billing memo, which I actually don't see
25 here -- well, they're kind of one in the same. Here we

1 go. This billing, this letter right here, 030121
2 typically went out with the bills. I don't know that
3 it's really any different from the confirming letter,
4 to be honest. I don't know why there's different check
5 boxes.

6 Q So I'm understanding, the confirming letter
7 could also serve as the billing memo?

8 A Yes.

9 Q And that's what happened, at least appears
10 that's what happened here?

11 A Yes.

12 Q Okay. And one last question about the cover
13 sheet. Do you see on the lower, right-hand corner, it
14 bears a date, January 23, 2009?

15 A Yes.

16 Q And what does that signify in this context?

17 A If you look at 030123, there is a finalize
18 date and a last changed date, and those two are the
19 same. So my assumption is that's when the chargeback
20 was finalized.

21 Q Was the cover sheet generated when the
22 chargeback was finalized?

23 A Should have been, yes. This is a systematic
24 date, it appears.

25 Q Okay. Going to the confirming letter that

1 you identified. That's that document, 30121.

2 A Yes.

3 Q That's -- was it Circuit City's practice to
4 send a confirming letter to a vendor with respect to a
5 chargeback?

6 A Yes. Generally, a billing would include all
7 of these VMA documents that you see, 030121 through
8 030125. Those are system generated documents, and then
9 the documents that follow that, the e-mails, et cetera,
10 would also be included with the bill.

11 Q So Circuit would actually send not just the
12 cover sheet and the confirming letter, it would also
13 send the documents through document 125 that you
14 mentioned?

15 A Yes.

16 Q Okay. At the time that Circuit was still
17 operating its stores, did it have a standard format for
18 confirming letters?

19 A Yes.

20 Q Okay. And did the letter from Mr. Hawkins to
21 Sony, that's document 30121, follow or adapt that
22 standard format?

23 A Yes.

24 Q And do you see that the next to last
25 paragraph of document 30121, that confirming letter

1 states, quote, payment is due immediately and will be
2 collected via check or wire from the vendor for
3 chargeback number 97769, end quote?

4 A Yes.

5 Q And before Circuit filed its bankruptcy
6 petition, did Circuit's standard format for confirming
7 letters say that payment would be collected via check
8 or wire?

9 A I'd have to look at the documents. To be
10 honest with you, I've seen it both ways, that, and
11 deducted from payment or invoice.

12 Q And do you know how it came about that a
13 letter would end with a request for payment in one way
14 versus the other ways that you've seen?

15 A I believe there's a flag in VMA, and it could
16 have been intentional or unintentional, you know, how
17 the buyers chose which way, you know, which box to
18 check, if you will. That's where that line fed from.

19 Q Did you ever see any confirming letters
20 before Circuit's bankruptcy petition that asked for
21 payment via check or wire?

22 A I've seen others that say it. I don't recall
23 if it's prefiling.

24 Q Okay. And do you recall -- I see. Okay.
25 You don't recall. That's fine. Did Sony ever send

1 Circuit a payment by check or wire for a chargeback?

2 A I cannot think of an instance where they did.

3 Q Did Circuit ever contact anyone at Sony to
4 follow up on a request for payment by check or wire for
5 a chargeback?

6 A There was definitely contact to follow up on
7 outstanding receivables, but specific to how it would
8 be, whether or not it would be collected via check or
9 wire, I'm not aware of that.

10 Q Did you ever discuss with anyone whether Sony
11 chargebacks were payable in cash?

12 MR. FEINSTEIN: Objection. Well, excluding
13 conversation with counsel.

14 BY MR. GOLDWATER:

15 Q Sure.

16 A No.

17 Q Unless you want me to hear them, it's up to
18 you. Ms. Fose, could you turn, please, to the document
19 bearing the Bate stamp 30123 in the lower right?

20 A Yes.

21 Q Did this document have a name?

22 A Again, it's just part of the package, if you
23 will, that came standard from VMA for chargebacks. If
24 it had a name, I don't know what it is.

25 Q And I think you said this document, too, you

1 understand was sent to vendors as a standard practice?

2 A I believe so, yes. I know it was sent to
3 Sony because it's in all of our binder documents.

4 Q Do you see in the upper right-hand corner of
5 document 30123, that it says, status, colon, completed?

6 A Yes.

7 Q And what did that mean?

8 A That the chargeback was completed.

9 Q And what did it mean to complete a
10 chargeback?

11 A I believe when the buyer went in and -- your
12 choices, I believe, are draft and completed. So once
13 it came out of draft, meaning that Circuit City had
14 performed whatever it needed to to earn the funding,
15 then it would be put into a completed state.

16 Q Do you see on the left side of the page,
17 under the heading for chargeback, it says CR number?

18 A Yes.

19 Q Do you know what that was?

20 A I'm not familiar with that number or even
21 that header.

22 Q Okay. Do you see underneath the status
23 completed, a couple of lines down, it says created by,
24 and it says, has Mr. Hawkins' name?

25 A Yes.

1 Q And what did the "created by" line refer to?

2 A Who created the chargeback.

3 Q Okay. And created in this context means the
4 person who put in the information in the first place?

5 A Yes, into VMA.

6 Q Into VMA. Would the buyer typically be the
7 creator of the chargeback?

8 A Yes.

9 Q Okay. And do you see underneath the created
10 by line, there's a line that says "finalized by"?

11 A Yes.

12 Q And was there a distinction between creating
13 and finalizing the document?

14 A Yes. The finalized would happen once it was
15 approved by accounting. Rachel was in accounting, so
16 she had -- in vendor funding accounting.

17 Q And what did accounting do to approve or
18 disapprove?

19 A As I mentioned before, just really reviewing
20 the documentation and insuring that Circuit City had
21 actually performed whatever they needed to to earn the
22 chargeback. The dates were accurate, that type of
23 thing, that we had support.

24 Q Okay. And is the finalized date that is
25 underneath the finalized by line, what did that refer

1 to?

2 A The date that Rachel finalized the
3 chargeback.

4 Q Is that the date that the status would change
5 to completed?

6 A I believe so, but I can't say for sure.

7 Q And was Circuit suppose to take some action
8 on the date that a chargeback was completed?

9 A When the chargeback was finalized?

10 Q Yes, I'm sorry, finalized.

11 A I assume they're synonymous, but when the
12 chargeback was finalized and approved, then that's when
13 it would be eligible to interface with the vendor
14 receivable system, and ultimately bill the vendor.

15 Q Is that also the day that the confirming
16 letter would go out?

17 A In theory. Like I said, we lost some billers
18 for a while, so.

19 Q Okay. If you could just help me out with
20 some of the captions on the left side of the page. You
21 see there's a caption halfway down called, it says
22 "based on", b-a-s-e-d, on?

23 A Yes.

24 Q And what does that refer to?

25 A In this instance, it's just indicating it's a

1 sales-based chargeback.

2 Q I see. As opposed to what, what are the
3 other things that you've seen in that column?

4 A It may just be blank if it's not related to
5 sales at all. It's based on, you know, an add or
6 something like that. It just depends on the type of
7 chargebacks. I don't remember all the different terms
8 that flow through there.

9 Q Do you see under that, there's an entry, is
10 there a threshold, question mark?

11 A Yes.

12 Q And what does that refer to?

13 A In some instances, there could be chargebacks
14 that are based on obtaining a certain threshold in
15 sales. This one wasn't.

16 Q And under that, it says, do you see it says
17 "sales for", f-o-r?

18 A Yes.

19 Q What does that refer to?

20 A It's just explaining that what you see over
21 to the right, just below it, that's what the sales are
22 based on. They're the sales of class 217 Sony, that
23 specific model, et cetera.

24 Q Going down a couple of lines, you see it says
25 "sales based on", and it says "written"?

1 A Yes.

2 Q Can you tell me what that refers to?

3 A This is when the sale occurred at the, at the
4 point of sale transaction. In other words, the sales
5 you see above are based on point of sale, transactions
6 from 12/14/08 through 12/27/08, net of returns.

7 Q You see under that is start date?

8 A Yes.

9 Q Is that the first day of the program period?

10 A Yes.

11 Q And is end date under that refer to the last
12 day of the program period?

13 A Yes.

14 Q Do you see billing frequency is under that?

15 A Yes.

16 Q What does that mean?

17 A In this case, it says immediate, which I
18 assume means get the bill out immediately.

19 Q What's the -- is the frequency of the billing
20 measured from the date that this document is, that the
21 chargeback is completed?

22 A To be honest, I'm not sure.

23 Q Does it ever say anything other than
24 immediate?

25 A I don't think I've seen it say anything other

1 than that.

2 Q Okay.

3 A That hasn't come up before.

4 Q Do you see that under that, it says, "payment
5 how"?

6 A Yes.

7 Q And what did that mean?

8 A In this case, it says deduct from AP balance.

9 Q And was that how Circuit was going to obtain
10 the benefit of the chargeback?

11 A That's what it says, which is in conflict
12 with the letter, but yes.

13 Q Okay. Did Circuit deduct chargebacks from
14 account payable balances?

15 A In general?

16 Q When they were entitled to?

17 A Yes.

18 Q And how did they implement that? What did
19 they do in order to deduct a chargeback from an account
20 payable balance?

21 A Heather can speak more on the specifics to
22 actually what they did in the payables department, but
23 on the receivable side, there was basically a push or
24 an interface from receivables to the merchandise
25 payables department, and from what I've seen, when

1 checks were cut, if there were outstanding invoices,
2 and there were also these outstanding credits or what
3 you saw describe in this, Exhibit Number 3, as AV's,
4 then the net of those would be ultimately what was paid
5 to Sony.

6 Q So it factored into a, the next payment or a
7 subsequent payment from Circuit to Sony?

8 A Yes.

9 Q And who would make the determination as to,
10 on the "payment how" line?

11 A The buyers are who set everything up, really,
12 in VMA. If they did it accurately every time, I can't
13 attest to that, but that's who would have checked the
14 box.

15 Q In theory, they were the ones who determined
16 the "payment how" mechanism?

17 A Yes.

18 Q And do you happen to know how the buyers
19 would determine the method of payment?

20 A I don't know.

21 Q Do you know if it was based on the Sony
22 program document?

23 MR. CAINE: Objection.

24 THE WITNESS: Could have been. Many of the
25 documents I've seen are, don't get into how it's

1 going to be, how Circuit City is going to receive
2 the credit. I have seen some, I recall a specific
3 program document from Sean O'Brien to Circuit in
4 the middle of 2008, I believe it was, where he
5 indicated that Circuit City could use the credits
6 to apply against outstanding AP balance.

7 BY MR. GOLDWATER:

8 Q Ms. Fose, you did mention that the "payment
9 how" method, just on document 30123 was inconsistent
10 with the confirming letter. Do you know how that came
11 to be?

12 A I don't. They both come from VMA, so I'm not
13 sure.

14 Q And was the person who was responsible for
15 the confirming letter different from the person who was
16 responsible for the "payment how" entry on 30123?

17 A I don't think so. The information on this
18 letter was fed from VMA. What I'm unsure about is if
19 the biller would have made any modifications to it. I
20 don't know.

21 Q Okay. Going back to that 30123. Do you see
22 under "payment how", it says vendor payment due, d-u-e,
23 days, vendor payment due days?

24 A Yes.

25 Q And what does that mean?

1 A In this case, it says zero, so I believe
2 Circuit City felt that the payment was due immediately
3 upon the bill.

4 Q Okay. So was the vendor payment due days
5 field the number of days from the submission claim to
6 the vendor, until payment of the chargeback was due
7 from the vendor?

8 A That's what it appears to be.

9 Q And do you know how Circuit determined the
10 vendor payment due days?

11 A I'm not sure.

12 Q Do you know if Circuit generally took the
13 view that payment was due immediately?

14 A From what I've seen, yes.

15 Q All right. And is it correct that the
16 starting date and measuring the vendor payment due days
17 is the date Circuit sent the chargeback claim to the
18 vendor?

19 A Say that again.

20 Q Sure. Let's do it concretely, so I'll make
21 sure we're both on the same page. You noted that this
22 document, the vendor payment due days has an entry of
23 zero. Did a zero entry for vendor payment due days
24 mean that Circuit had an immediate right to payment?

25 A Yes, it's my understanding.

1 Q In this instance, did that mean that payment
2 for Circuit for this chargeback was due on January 23,
3 2009?

4 A Yes. The general practice was that we would
5 deduct it from the AP balance, so immediately, when
6 this interfaced the vendor receivables, ultimately,
7 there would be an interface to payables and would go
8 from there.

9 Q And so whether Sony did anything or not,
10 Circuit was going to apply that chargeback on a
11 subsequent payment?

12 A We would apply it to subsequent payment, so
13 long as there was no dispute by Sony.

14 Q Okay. And January 23, 2009, was also the
15 date that the confirming letter and chargeback claim
16 was sent to Sony, right?

17 A Yes. That's my understanding from the
18 document.

19 Q All right. Do you see under, I'm back on
20 30123.

21 A Yes.

22 Q Do you see under vendor payment due days it
23 says "allocation on", o-n?

24 A Yes.

25 Q What does that mean?

1 A This is just showing the allocation. It's
2 kind of hard to take one without going to the next one
3 because they're related to each other, but the
4 allocation is the allocation of the total receivable
5 amongst the different classes in this particular case.
6 It's really just an internal reference.

7 Q Thank you. So these references under
8 allocation to type and subtype and sales details on the
9 next page and item details and workflow comments, those
10 are all internal Circuit City --

11 A Right. I don't think the type and subtype
12 and even class have a ton of meaning necessarily to
13 Sony, but the next page, 30124, certainly they would
14 want to know quantity and amount of unit, because
15 that's ultimately how the final chargeback of 7.4
16 million was calculated.

17 Q Okay. Would you turn in this same Exhibit 5
18 to the page with number 30126?

19 A Yes.

20 Q You see this is a document that looks much
21 like the one we just looked at, except it says "status
22 draft" in the upper, right-hand corner?

23 A Yes.

24 Q What did "draft" mean in that context?

25 A Just that it was in draft state. Maybe they

1 needed to get some more information. It's -- I don't
2 know what it meant for this specific one, but it wasn't
3 finalized yet.

4 Q Okay. And I take it this would not be sent
5 out, a draft version of this document would not get
6 sent out to a vendor?

7 A No, but this could have been included in the
8 support that ultimately got sent, but we wouldn't send
9 the draft chargeback until it was a final chargeback.

10 Q Okay. You see that on the draft there's a
11 last changed date in the upper right of December 11,
12 2008?

13 A Yes.

14 Q And that was before the program start date of
15 December 14, 2008?

16 A Yes.

17 Q Was there anything unusual about a buyer
18 starting to process a chargeback before the program
19 start date?

20 A No. I believe they would want to have the
21 chargeback set up and ready with the specified start
22 and end dates of the program ahead of time.

23 Q Okay. Do you see that this particular page,
24 30126, has a handwritten notation, "hold filing"?

25 A Yes.

1 Q Do you have any idea how that came to be on
2 this document?

3 A I don't.

4 Q Was there any period of time when, to your
5 knowledge, Circuit was holding off on submitting
6 chargeback claims to Sony?

7 A The only thing that I know of that was held
8 at one point was based on this, the billing memo or
9 confirming letter that we talked about, because
10 post-petition chargebacks, this paragraph that states,
11 Circuit City confirms and accepts the funding --

12 Q I'm sorry, what document are you on?

13 A I'm sorry. I'm on 030121. If you were to
14 look at pre-petition chargebacks, this paragraph looks
15 different, because here, we're just stating that you
16 can't apply the post-petition to offset the
17 pre-petition balances due.

18 Q Okay. And if you answered this, I apologize.
19 Was there a period of time when Circuit was holding off
20 on submitting chargebacks to Sony?

21 A I don't know that there was any intention to
22 hold off, other than this cover page was being
23 rewritten. I don't know if that really kept anything
24 from being held up. I just remember that the cover
25 page was rewritten, and then the other hold, again, not

1 necessarily intending to hold, but when we didn't have
2 billers, there was no one to bill.

3 Q Okay. All right. And this same Exhibit 5,
4 could you turn to the document number 30129?

5 A Yes.

6 Q You see that appears to be an e-mail from
7 Mr. Hawkins, dated December 11, 2008?

8 A Yes.

9 Q Do you know if this was among the documents
10 that Circuit would, in the ordinary course, send to
11 Sony?

12 A Yes, as support for the chargeback. This is
13 what I would view as being the program agreement that
14 follows.

15 Q Do you see the e-mail is addressed to, among
16 others, VMA chargeback request at Circuit City?

17 A Yes.

18 Q And who received e-mails at that address?

19 A The vendor funding group received e-mails at
20 that address.

21 Q And were the vendor funding people divided in
22 any way as to what kinds of chargebacks or vendors they
23 dealt with?

24 A They were, but I don't remember what that
25 division was, to be honest.

1 Q So if there was a Sony person, you don't know
2 who that was?

3 A Right. I don't even think they were done by
4 vendor, I think it was by buyer, like they had a
5 partnership with a specific buyer, from what I
6 remember.

7 Q Okay. And do you see that the e-mail is also
8 addressed to CES accounting at Circuit City?

9 A Yes.

10 Q And who was -- what was CES accounting?

11 A That's also vendor funding.

12 Q The same people who work in CES accounting
13 work in the vendor funding group?

14 A Yes.

15 Q And do you see the e-mail was also addressed
16 to David Tuttle, T-u-t-t-l-e?

17 A Yes.

18 Q And who was Mr. Tuttle?

19 A He worked in the vendor funding department,
20 as well.

21 Q What was his title?

22 A I believe he was an analyst.

23 Q Did he have any role in implementing or
24 refining or creating processes for the processing of
25 chargebacks?

1 A He would have been involved in working with
2 the buyers to insure we had the proper documentation
3 and to ultimately approve of the chargeback.

4 Q Okay. Would you turn within Exhibit 5 to the
5 page with the number 30133.

6 A Sure.

7 Q Are you looking at the document that says
8 "chargeback approval checklist" at the top?

9 A Yes.

10 Q And what was this document?

11 A This was an internal document. I don't
12 exactly know when it was first put into practice, but
13 this was part of the vendor funding folks, I guess,
14 checklist, if you will, to insure that everything was
15 done as it was supposed to, T's crossed, I's dotted,
16 before they approved the chargeback.

17 Q Do you know if this was part of their
18 standard procedure for chargebacks?

19 A I don't know if it was for a specified dollar
20 amount, but I know I've seen a lot of these, but not
21 every chargeback has had them.

22 Q Who was responsible for completion of the
23 approval checklist?

24 A It would have been whichever vendor funding
25 accounting analyst was in charge of that particular

1 chargeback.

2 Q And was the purpose to make sure that the
3 chargeback had appropriate support?

4 A Yes.

5 Q And was Circuit suppose to complete the
6 approval checklist before it finalized the chargeback
7 claim?

8 MR. FEINSTEIN: Objection.

9 THE WITNESS: Yeah, kind of like what I was
10 saying before, I don't really know when this was
11 implemented, that they were certain dollar
12 thresholds that had to be met, because this
13 document is not one that we would have sent out
14 externally, and we didn't necessarily save them
15 all, if that makes sense.

16 BY MR. GOLDWATER:

17 Q When you say you didn't save them all, you
18 didn't -- do you mean you consciously saved some of
19 them but not others or it just so happens that you have
20 some but not others, and you have no idea why?

21 A Yes, because all the chargeback documents
22 that you see were extracted from a system called
23 OnBase, which is just a document imaging system, if you
24 will, and chargebacks were scanned and put into that
25 system. Whether or not they included the checklist

1 with it, it's hard to say, because that, again, isn't
2 something we would send to Sony. So to support the
3 chargeback, it wouldn't need to be there to send to
4 Sony.

5 Q Would it live inside of Circuit City's
6 records still?

7 A If it were scanned into OnBase, yes.

8 Q What happened if it wasn't scanned into
9 OnBase?

10 A Then I have no idea if we have it or not.

11 Q Who was doing the scanning?

12 A It's just part of the overall chargeback
13 process. After chargebacks were billed, the
14 corresponding documentation that justified the
15 chargeback, if you will, I don't know who physically
16 did the scanning, but there was a process in place
17 where chargebacks were scanned into OnBase so that you
18 could always go back and look at chargeback 97769, and
19 pull up the documents that were associated with it.

20 Q Have you done that in the course of your
21 work?

22 A Yes. That's how we created or I created all
23 the documentation in the binders. It was pulled from
24 OnBase.

25 Q And what would have become of the documents

1 that weren't scanned into OnBase?

2 A I don't know. I mean, it could have been
3 sent to storage, could have been left behind. Anything
4 that's relevant to support the chargeback should have
5 been scanned. If it wasn't, then it may not have been.

6 Q Was this chargeback approval checklist one of
7 the documents that was needed to support the
8 chargeback?

9 MR. CAINE: Objection.

10 THE WITNESS: Internally, at certain levels,
11 I believe it was, but not for external support.

12 BY MR. GOLDWATER:

13 Q And maybe I'm exhausting your knowledge. To
14 the best of your knowledge, when people were scanning
15 documents into OnBase, did they include chargeback
16 approval checklists when they were available to be
17 included?

18 A I've seen it both ways, and again, part of it
19 is I don't know when they implemented the checklist,
20 and I don't know what level a checklist was required.

21 Q When you say the level, you're saying for
22 certain dollar amounts of chargeback, you might need
23 this document, this approval checklist, and for lesser
24 amounts, you might not?

25 A Correct.

1 Q I see. And do you know if for the
2 chargebacks that you do need it for, the approval
3 checklist was scanned in?

4 A I can't say for certain. It was an -- I
5 mean, we have thousands of chargeback documents in
6 OnBase. I have no way of knowing that for sure.

7 Q Understood. And I don't expect you to sit
8 here and tell me about every chargeback.

9 A Sure.

10 Q I'm wondering if as a general process, you
11 know whether people were suppose to scan in approval
12 checklists, whether or not they actually did?

13 A I don't even know if they were suppose to,
14 because again, it's not, it's not relevant to when we
15 bill the vendor. It has no bearing on the vendor
16 support. It's an internal control document.

17 Q Okay. If we look at the approval checklist
18 and you see the first caption says "secondary review"?

19 A Yes.

20 Q What was a secondary review?

21 A Well, it looks like based on these dollar
22 amounts, someone other than the analyst that would be
23 at the top would have been required to review, based on
24 these dollar amounts. But again, I wasn't involved in
25 creating this, nor did I ever check off anything on one

1 of these, so.

2 Q And were the approval levels that you
3 mentioned those that are reflected in the box
4 underneath the secondary review caption?

5 A It appears to be, yes.

6 Q Do you see that there are different approval
7 levels for categories called "PPT", and a category
8 called, "all others"?

9 A Yes.

10 Q What was a PPT in this context?

11 A I'm not sure.

12 Q Do you know who would have that information?
13 Who would you ask?

14 A I would probably ask Carole Elliott.

15 Q Do you see that the chargeback 97769, that's
16 the subject of this approval checklist was in an amount
17 of over 7, about \$7.4 million?

18 A Yes.

19 Q So for that kind of chargeback, and a
20 chargeback in that amount, I take it you would get a
21 secondary review by all of the four groups listed under
22 secondary review?

23 MR. CAINE: Objection.

24 THE WITNESS: I'm not sure, or if they would
25 jump directly to the highest level review.

1 BY MR. GOLDWATER:

2 Q I see. You don't know whether you need to
3 get all four or just the highest level?

4 A Right. Cause again, this is just internal
5 control.

6 Q Were the secondary reviewers suppose to
7 indicate on the checklist whether they had approved the
8 chargeback?

9 A It looks that way. I've seen some where
10 they've initialed them.

11 Q All right. And have you seen any record of
12 whether they've approved, other than initialing them or
13 is that the way you've seen it?

14 A That's the way I've seen it.

15 Q And does this particular approval checklist
16 reflect whether the approvals have been obtained?

17 A This one doesn't, no.

18 Q And did Circuit do follow-up to try to get
19 approvals when it didn't get them originally?

20 MR. CAINE: Objection.

21 THE WITNESS: I'm not sure. Generally
22 speaking, a chargeback wouldn't be finalized or
23 billed without the proper approvals. It may be
24 that there's a completed checklist somewhere and
25 it's not in here. I don't know. At this date,

1 1/5/2009, it could have been an e-mail. I have no
2 way to know, to be honest.

3 BY MR. GOLDWATER:

4 Q And would this chargeback be submitted to
5 Sony without approval from the secondary reviewers or
6 review?

7 MR. FEINSTEIN: Objection.

8 THE WITNESS: I don't know if they would
9 approve it on this checklist, but it would go
10 through an accounting review process that was then
11 ultimately reviewed by our external auditors, as
12 well, on a quarterly basis.

13 BY MR. GOLDWATER:

14 Q So you're saying at the quarter end, an
15 auditor could come back and look at chargebacks that
16 had gone out previously?

17 A They definitely did.

18 Q They're not involved in any preclearance of a
19 chargeback?

20 A No.

21 Q Do you see on the next section of the
22 chargeback approval checklist has a caption, "GL
23 Impact"?

24 A Yes.

25 Q What was GL Impact?

1 A It would have been general ledger.

2 Q And what information was suppose to be
3 recorded in the GL Impact section?

4 A I can't say for sure, because this was not
5 filled out, but it looks like an allocation between
6 quarters, if appropriate. In this case, this has a 7.4
7 million under MSP. I'd have to look to see what this
8 chargeback was for. Trailing credit, which if you go
9 back to 030123, has the type of must spend, subtype of
10 markdown. I'm assuming the MSP is somehow related back
11 to that categorization. Just, again, an internal
12 categorization.

13 Q I'm sorry, to the best of your knowledge, MPS
14 refers to what?

15 A Must spend markdown.

16 Q What is a must spend markdown?

17 A It's an internal categorization of vendor
18 funding. This particular chargeback is sales-based,
19 and it ultimately would have triggered cost of sales
20 entry, which I really can't tell you why someone put
21 that dollar amount in that box. I don't know who
22 filled it out.

23 Q This also has that PPT next to it. Do you
24 have any better recollection now than you did before?

25 A I don't. I mean, I just would be

1 speculating.

2 Q Okay. That's fine. Do you see the third
3 section of the chargeback approval checklist says, "SAB
4 Impact"?

5 A Yes.

6 Q What did SAB impact refer to?

7 A SAB was an accounting pronouncement that if
8 you were to make an error in reporting on the
9 financials of any particular magnitude, then that would
10 have an impact, and you would ultimately be responsible
11 for making any corrections. Again, this is an area
12 that I think the external auditors would kind of hone
13 in on.

14 Q Would you turn, please, to the next page, it
15 has number 30134?

16 A Yes.

17 Q Do you see that also has the heading
18 chargeback approval checklist?

19 A Yes.

20 Q And do you see underneath that it says, this
21 page must be included with all completed chargebacks?

22 A Yes.

23 Q What was the transmission of information that
24 that page was supposed to be included with?

25 A I am not sure.

1 Q Do you see that there is a caption under that
2 line that says, "documentation and support"?

3 A Yes.

4 Q Okay. And under that, there is a bunch of
5 entries, lump sum, sales-based, price protection and
6 BOR?

7 A Yes.

8 Q Are those different types of chargeback
9 programs?

10 A Yes.

11 Q What's a BOR?

12 A Based on receipt.

13 Q And do you see under that, there is a line
14 that says, "standard procedure for all chargebacks"?

15 A Yes.

16 Q And is it your understanding that these refer
17 to all chargebacks as distinguished from the
18 chargebacks of a certain monetary threshold that you
19 referred to earlier, that required a secondary review?

20 MR. CAINE: Objection.

21 THE WITNESS: I don't know when this
22 checklist came about. Like I said, I've seen some
23 that are filled out and some that aren't. I know
24 that the analysts would have submitted this to the
25 supervisors. Where it went from there, I'm not

1 sure.

2 BY MR. GOLDWATER:

3 Q Yeah, I'm asking you a very narrow question
4 about whether this standard procedure for all
5 chargebacks literally means it applies to all
6 chargebacks, whereas I know you had told me that the
7 secondary review only applied to chargebacks of a
8 certain, over and above a certain monetary threshold.

9 A That's what it says, but again, I don't know
10 what time frame that would cover.

11 Q What time frame was the approval checklist in
12 effect?

13 A I don't know.

14 Q Was it in effect when you assumed responsible
15 in January of 2009?

16 A I never was responsible for looking at one of
17 these. So if it was, then it would have been at a
18 different level, perhaps at a supervisor level.

19 Q I'm sorry, you do or don't know whether it
20 was in effect in January of 2009?

21 A I don't, because it was never -- these were
22 never submitted to me.

23 Q And do you have any understanding as to what
24 period of time these were in effect?

25 A No.

1 Q And who would you ask if you wanted to find
2 that out?

3 A Either Carole Elliott or Greg Lambert.

4 Q Okay. Under the caption "standard procedure
5 for all chargebacks", do you see that there are
6 questions followed by boxes that give you the option
7 yes, no or N, slash A?

8 A Yes.

9 Q And are those questions that the analyst was
10 supposed to answer with respect to the questions?

11 A That's my understanding.

12 Q And do you see in this particular document,
13 there are a lot of blacked out boxes in the N/A column?

14 A Yes.

15 Q Is the blacked out box, to your
16 understanding, the response to those questions?

17 A No.

18 Q I see. It's just the way it's printed?

19 A I think you don't have the choice to select
20 N/A.

21 Q I see. I see. So where it's a blacked out
22 box under N/A, you have to select either yes or no, is
23 that your understanding?

24 A That's my understanding.

25 Q Okay. And for however long this approval

1 checklist was in effect, was it the procedure for the
2 analyst to respond to that list of questions?

3 A I'm not sure. I mean, I would assume so.

4 Q Do you see the third question in this list of
5 questions, is, quote, does the effective date
6 correspond to period when funds are earned, question
7 mark, closed quote?

8 A Yes.

9 Q How did Circuit determine the period when
10 funds are earned?

11 A It would be, in this instance, based on the
12 start and end date of the program.

13 Q Did you say start and end date?

14 A Uh-huh. Yes.

15 MR. GOLDWATER: I'm sorry. Thank you. Off
16 the record for a second.

17 (Brief discussion was held off the record.)

18 (Sony Exhibit No. 6 was marked.)

19 BY MR. GOLDWATER:

20 Q I'm going to show you a document that's been
21 marked as Sony Exhibit Number 6.

22 A Yes.

23 Q Okay. Ms. Fose, are you able to identify
24 this document?

25 A Yes.

1 Q What is it?

2 A Advertising billing memo.

3 Q And did Circuit City generate advertising
4 billing memos?

5 A Yes.

6 Q And what was an advertising billing memo?

7 A I believe this was, again, just part of the
8 package that went out to the vendors when we billed for
9 chargebacks.

10 Q So along with the other documents you already
11 showed me that went out to the vendor, they would
12 include a document like this?

13 A Yes. Yes, sir.

14 Q Okay. Do you see the bottom of the document
15 states that it was prepared by advertising accounting
16 and has a name, Dana Griffin?

17 A Yes.

18 Q What is advertising accounting?

19 A It's all a part of vendor funding accounting.
20 It's just, over the years, Circuit City has many
21 different names for basically the same function.

22 Q And did Ms. Griffin, for example, have any
23 responsibility for Circuit's submission of chargeback
24 97769?

25 A Yes. She's one of the billers I specifically

1 had to call and ask to come back to do the billing.

2 Q So she's actually one of the analysts in
3 vendor funding who prepared the claim for submission to
4 Sony?

5 A She wasn't an analyst. She would have been
6 one of the folks I was referring to as a biller, which
7 was lower level than an analyst, but I don't remember
8 the exact title.

9 Q I see. So there were the people you already
10 identified as Ms. Elliott, and the people that reported
11 to her, and there were analysts and then there were
12 billers?

13 A Yes.

14 Q Were there any other categories?

15 A Probably, I don't remember everyone's titles,
16 to be honest.

17 MR. GOLDWATER: Off the record for a minute.

18 (Brief discussion was held off the record.)

19 MR. GOLDWATER: May I have this marked as 7,
20 please.

21 (Sony Exhibit No. 7 was marked.)

22 BY MR. GOLDWATER:

23 Q I show you what -- do you have the Exhibit 7
24 in front of you?

25 A Yes.

1 Q Okay. Is the Exhibit 7 documents that
2 concern Circuit City chargeback 92982?

3 A Yes.

4 Q And do you see that the document with number
5 50063 is a chargeback cover sheet for chargeback 92982?

6 A Yes.

7 Q And you see that cover sheet is dated
8 November 12, 2008?

9 A Yes.

10 Q And if you look at the next page, 500 --
11 excuse me, if you look two pages into a document that
12 says, an SEL Bate's number 439, do you see that that is
13 a, is that a confirming letter?

14 A Yes.

15 Q And is that a confirming letter from Circuit
16 to Sony regarding chargeback 92982?

17 MR. FEINSTEIN: Objection.

18 THE WITNESS: Yes.

19 BY MR. GOLDWATER:

20 Q And did Circuit send this claim to Sony on
21 November 12, 2008?

22 A It appears that they did.

23 Q Okay.

24 MR. CAINE: Can I stop you for a second?

25 MR. GOLDWATER: Sure.

1 MR. CAINE: This document, the last page, is
2 that something you just stapled to the others in
3 order to create Exhibit 7?

4 MR. GOLDWATER: Yes. Absolutely correct.

5 BY MR. GOLDWATER:

6 Q Okay. Now I think you touched on this
7 before, but I want to ask you just with the benefit of
8 this Exhibit 7 in front of you. Was there a time when
9 Circuit's standard format for confirming letters stated
10 take Circuit would collect payments for chargebacks via
11 a deduction from the vendor's AP balance?

12 A Yes.

13 Q And do you know when that period ended or
14 when there was a change?

15 A I know that there was a change after filing,
16 because the entire paragraph was changed. What I
17 didn't know is if in every single instance of a
18 chargeback prior to that, that it read this exact way.
19 I'm not 100 percent sure.

20 Q Okay. All right. And if you look at Exhibit
21 2, which is Exhibit B to the complaint.

22 A Yes.

23 Q And I know you were anticipating where I was
24 headed with this. Do you see on page five, the fourth
25 line down, has a reference or an entry for that

1 chargeback 92982?

2 A Yes.

3 Q And do you see in the pre-post column that
4 this particular chargeback is classified as a
5 pre-petition chargeback?

6 A Yes.

7 Q And why is it that it is described as a
8 pre-petition chargeback?

9 A Because the program itself was for July,
10 August and September. So the end of that program would
11 have been September 30th, which is prior to the
12 bankruptcy filing.

13 Q And was Circuit entitled to that chargeback
14 before it submitted a claim to Sony?

15 MR. CAINE: Objection.

16 THE WITNESS: I believe we were entitled as
17 soon as we performed the obligations under the
18 program, which appears to be September 30th.

19 BY MR. GOLDWATER:

20 Q Okay. And what's the basis for your belief?

21 A That's the end date of the program, itself.
22 We would have earned the financing funding through that
23 date.

24 Q Are you informed by accounting guidance when
25 you come to that? Is that part of the basis of your

1 belief?

2 MR. FEINSTEIN: Objection.

3 THE WITNESS: There is accounting guidance
4 surrounding consideration received from vendors.
5 There's a lot of accounting guidance that speaks
6 to the timing of when you record entries, but yes,
7 Circuit City's belief is that we earned the
8 funding based on the effective dates of the
9 funding, and that's when it would be recorded and
10 earned.

11 MR. GOLDWATER: Okay. Should we break?

12 (Recess was taken for lunch.)

13 BY MR. GOLDWATER:

14 Q Ms. Fose, would you please look at Sony
15 Exhibit 2, which is Exhibit B to the amended complaint
16 in front of you?

17 A Sure.

18 Q And if you would, please, take a look at page
19 13 of 76.

20 A Yes.

21 Q Just to orient you, do you see the page
22 before that says billback?

23 A Yes.

24 Q Okay. Do you see the field, I'm sorry, the
25 column title at the top of page 13 of Exhibit 2, that

1 says "date"?

2 A I'm sorry, say that again.

3 Q Sure. Do you see the column titles that run
4 across the top of the page of Exhibit 13 -- I'm sorry,
5 page 13 of Exhibit 2?

6 A Yes.

7 Q Okay. And I'm going to direct your attention
8 to the column titled "date". It's about halfway.

9 A Yes.

10 Q Okay. What does the date column show?

11 A That is the key rec date.

12 Q What is a key rec?

13 A Key rec is an internal Circuit City number
14 for receivings.

15 Q Am I understanding you that this shows the
16 date on which Circuit City received product?

17 A Yes.

18 Q And how does Circuit City's receipt of
19 product bare on its entitlement to a billback?

20 A These billbacks are based on receipt. So the
21 receipt date would obviously have an impact.

22 Q I see. The program, the billback programs
23 offer a chargeback upon Circuit City's purchase and
24 receipt of certain product?

25 A Yes.

1 Q I see. Okay. So did Circuit become entitled
2 to the billback upon its receipt of the product that
3 was the subject of the program?

4 A That's my understanding, yes.

5 Q And is the process for submitting a billback
6 claim to Sony the same as for a chargeback?

7 A Yes, that's my understanding.

8 Q Okay. Do you see that the columns across the
9 top of page 13 of Exhibit 2, also have a column called
10 RPT, period, DP, period?

11 A Yes.

12 Q And what is -- does that stand for anything?

13 A It's report date.

14 Q And what is the report date in this context?

15 A This is the date of the report of these
16 receivings, which generally occurred a few days after
17 the accounting month-end. I don't recall a specific
18 name of the report, but --

19 Q So that date will lag the actual receipt of
20 the product by some number of days?

21 A Yes. If you receive the product any time in
22 this, say the first line, for example, the month of
23 December, then the report on those receivings would
24 take place just a few days after the calendar
25 month-end.

1 Q And when in relation to Circuit's receipt of
2 the product did it submit the billback claim to Sony?

3 A I would have received the information
4 regarding the receivings after this report date, and
5 then the billing would have taken place after that. I
6 don't know the specific number of days.

7 Q Is it a matter of days from that point?

8 A Should be.

9 Q Does Circuit have record that would show when
10 it submitted billback claims to Sony?

11 A The majority of claims are submitted via
12 e-mail, so we may have them. We produced all the
13 e-mails we had access to. I don't recall specifically
14 seeing the e-mail related to these billbacks.

15 Q Okay. They were submitted via e-mail. Were
16 they submitted with the cover sheet and the other forms
17 that we saw with respect to billbacks?

18 A In theory, but I don't recall seeing those
19 specifically for these. It's, I believe the support
20 for these billbacks are in the binders. It's
21 referenced earlier on in this exhibit. Yes, it looks
22 like on page seven, it says binder six.

23 Q What does that support look like, is that
24 e-mails?

25 A I'd have to see it in front of me.

1 Q As we sit here, you don't remember what that
2 looks like?

3 A Most of the support, in general, included
4 e-mails, so it probably did. But I don't remember
5 exactly what the support was for these billbacks.

6 Q Okay. And other than the e-mails, did
7 Circuit maintain any records as to when it submitted
8 the billback claim to Sony?

9 A Whatever we have, we produced. I just don't
10 remember the specifics of what we produced.

11 Q When did Sony record in its records its
12 entitlement to the billback?

13 MR. FEINSTEIN: Objection. When did Sony?
14 BY MR. GOLDWATER:

15 Q I'm sorry. My mistake. When did Circuit
16 City record in its books its entitlement to the
17 billback?

18 A It would have been based on this report date.
19 That's when it would have been recorded from an
20 accounting standpoint.

21 Q I see. So at that point, Circuit is showing
22 a receivable from Sony in the amount of the billback?

23 A Right. And for some reason, it crossed over
24 quarters, since we were a publicly traded company, so
25 quarterly reporting was critical, then someone would

1 run a query to see what the receivings were and at
2 least account for some type of vestment for it, but
3 getting it into the system wouldn't occur until after
4 this report date.

5 MR. GOLDWATER: May I have this marked as
6 Sony Exhibit 8.

7 (Sony Exhibit No. 8 was marked.)

8 BY MR. GOLDWATER:

9 Q Okay. I show you what's been marked as Sony
10 Exhibit 8, and ask you to please take a look at that.

11 A Okay.

12 Q Okay. Do you see that Sony Exhibit 8 has a
13 first page that refers to a billback in the amount of
14 572,740 dollars?

15 A Yes.

16 Q Do you see the second page appears to be an
17 e-mail from Bob Altermatt to Charles Farmer at Circuit
18 City?

19 A Yes.

20 Q Have you ever seen this e-mail before?

21 A I don't recognize this one specifically.

22 Q Okay. In March of 2009, were you involved in
23 reconciling billback claims that Circuit had submitted
24 to Sony?

25 A I wouldn't have been reconciling the claims.

1 That would have really occurred with the buyer and
2 Sony, and if, as a result of that, there were any
3 things that needed to be corrected, they would have
4 communicated that to accounting. My first
5 reconciliation, for lack of a better term, didn't occur
6 until our counsel contacted Mr. Barrett.

7 Q Okay. Were the buyers still there at Circuit
8 in March of 2009?

9 A Some buyers were. Charles Farmer was.

10 Q I see. So the first instance, it would have
11 been Mr. Farmer's responsibility to deal with an e-mail
12 like this?

13 A Yes.

14 Q Okay. If you look at the text of the e-mail,
15 do you see that Mr. Altermatt is writing to Mr. Farmer,
16 and asking him to revise claim amounts?

17 A Yes.

18 Q Did Circuit or the Trust ever respond to Mr.
19 Altermatt's e-mail, to the best of your knowledge?

20 A To the best of my knowledge, someone would
21 have replied, and I'm not familiar with this e-mail,
22 but I know in the binders, we have e-mails where there
23 was communication back to Mr. Altermatt about
24 billbacks. I don't know if it was this specific one or
25 not.

1 Q Okay. So I take it Circuit or the Trust, for
2 that matter, would not have any reason not to respond?

3 A Correct.

4 Q They would try to respond, if they could?

5 A Correct.

6 Q And would anyone besides Mr. Farmer be
7 involved in trying to ascertain whether what
8 Mr. Altermatt was saying to him was correct or not?

9 A Well, Elliot Becker is copied on the e-mail,
10 and he was, to the best of my recollection, still at
11 Circuit City at that time.

12 Q And what was Mr. Becker's position?

13 A I don't remember his exact title. The
14 merchandising department kind of had unusual titles. I
15 want to say it was BTL, business team lead or something
16 like that. He was fairly high up within the
17 merchandising organization.

18 Q Okay. Was there anybody in vendor funding,
19 if I have the name of the group correct, who was
20 assigned to deal with MDF claims?

21 A I don't know that there was anyone specific,
22 but Greg Lambert, if there was anything that needed to
23 be adjusted on our end, would have taken care of it or
24 would have overseen the process, assuming he received
25 communication from Charles or Elliot.

1 Q And if there was a response, I would find it
2 in the Trust production of documents to us?

3 A You should. If it supports the actual amount
4 that's in the spreadsheet you would, yes.

5 Q Okay.

6 A Or if it were just under general e-mails.
7 It's hard for me to say exactly what e-mails are in
8 there, but we produced all that we had access to.

9 Q And would you have any way of ascertaining
10 today whether what Mr. Altermatt was conveying to
11 Mr. Farmer about the MDF claims was accurate?

12 A Are you asking me if his corrections are
13 correct?

14 Q Yeah, I'm asking if you, today, if you set
15 out to do it, and I'm not suggesting that you have, but
16 if you set out to do it, would you have a way of
17 figuring out whether what he says is correct?

18 A Possibly. I don't -- I'm not sure. I would
19 have to look at our support, obviously, and the detail
20 transactions that we have available. It's possible.

21 Q And how would you go about finding the
22 documents that he relates to this particular MDF claim?

23 A Honestly, I would start in binder six, with
24 what we had as the chargeback support. There may be
25 notes in there. There may be a responsive e-mail to

1 this, which may bring closer to the topic all together.

2 Q And then the absence of any other further
3 response, is there anything else you would be able to
4 do?

5 A Well --

6 MR. CAINE: Objection.

7 THE WITNESS: If I understand the e-mail
8 correctly, it sounds like he thinks we've already
9 claimed certain amounts, so that I could certainly
10 validate through the receivable system.

11 MR. GOLDWATER: Okay. I have some questions
12 about areas in which I think you deferred to
13 Ms. Ferguson, so I thank you very much.

14 THE WITNESS: You're welcome.
15
16
17
18
19
20
21
22
23
24
25

1 COMMONWEALTH OF VIRGINIA,
2 CITY OF CHESAPEAKE, to wit:
3

4 I, Lisa T. Lineberry, a Notary Public in and
5 for the Commonwealth of Virginia at Large, whose
6 commission expires April 30, 2016, certify that the
7 foregoing testimony was duly taken and sworn to
8 before me at the time and place and for the purpose
9 in the caption mentioned, and that the foregoing is
10 a true and correct transcript to the best of my
11 ability of the testimony and other proceedings
12 herein.

13 I further certify that I am not a relative or
14 employee of attorney or counsel of any of the
15 parties or financially interested in the action.

16 Given under my hand this day of July, 2014.
17

18 _____
19 Notary Public
20 Registration No. 244567
21
22
23
24
25